

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
VS.) CIVIL ACTION
)
GREG ABBOTT IN HIS) NO.: 1:23-cv-00853-DAE
CAPACITY AS GOVERNOR OF)
THE STATE OF TEXAS, AND)
THE STATE OF TEXAS,)
)
 Defendants.)

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF

JOHN TIMMEL

JUNE 5, 2024

REMOTE ORAL AND VIDEOTAPED DEPOSITION OF JOHN
TIMMEL, produced as a witness at the instance of the
DEFENDANT, and duly sworn, was taken in the
above-styled and numbered cause on June 5, 2024, from
9:15 a.m. to 6:06 p.m., before Vanessa J. Theisen,
CSR in and for the State of Texas, and reported by
machine shorthand, at the offices of the U.S.
Attorney General's Office, 903 San Jacinto Boulevard,
Suite 334, Austin, Texas 78701, pursuant to the
Federal Rules of Civil Procedure and any provisions
stated on the record or attached hereto.

<p>1 APPEARANCES</p> <p>2</p> <p>3 FOR THE UNITED STATES OF AMERICA:</p> <p>4 Mr. Brian H. Lynk Mr. Landon Wade Trial Attorneys UNITED STATES DEPARTMENT OF JUSTICE Environment & Natural Resources Division P.O. Box 7611 Washington, D.C. 20044-7611 (202) 307-0930 Brian.Lynk@usdoj.gov Landon.Wade@usdoj.gov</p> <p>9</p> <p>10 FOR GREG ABBOTT IN HIS CAPACITY AS GOVERNOR OF THE STATE OF TEXAS, AND THE STATE OF TEXAS:</p> <p>11 Mr. Johnathan Stone 12 Mr. David Bryant Special Counsel 13 Office of the Attorney General P.O. Box 12548, MC-009 14 Austin, Texas 78711-2548 (512) 936-2172 15 Johnathan.Stone@oag.texas.gov David.Bryant@oag.texas.gov</p> <p>16</p> <p>17 ALSO PRESENT (via Zoom Teleconference):</p> <p>18 Ms. Kristyn Miller Mr. Kyle Tebo 19 Ms. Munera Al-Fuhaid Mr. Thomas Ciarametaro 20 Mr. Max Miller Ms. Hannah Coulter 21 Ms. Kimere Kimball Mr. Andrew Knudsen 22 Consulting Expert (undisclosed name) Consulting Expert (undisclosed name) 23 Consulting Expert (undisclosed name) Consulting Expert (undisclosed name)</p> <p>24</p> <p>25</p>	<p>2</p> <p>1 INDEX (Continued)</p> <p>2 EXHIBITS</p> <p>3 NO. DESCRIPTION PAGE</p> <p>4</p> <p>10 February 2024 Sorola/Cavazos/Lynk</p> <p>5 Email, Subject: Follow-up Question from Timmel for CBP</p> <p>6 US0000591 - 594..... 48</p> <p>7 11 Page 28, Exhibit 14, of Expert Opinion Report of John C. Timmel, 8 Marked By Witness During Deposition....102</p> <p>9 12 March-April 2024 Timmel/Casner Email Exchange, Subject: USA v. Abbott:</p> <p>10 Draft Report - USACOD Data US0000801 - 0803.....153</p> <p>11</p> <p>12</p> <p>13</p> <p>14 REPORTER'S NOTE</p> <p>Quotation marks are used for clarity and do not</p> <p>15 necessarily reflect a direct quote.</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
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<p>6</p> <p>1 that Texas is not due to -- under the court's 2 scheduling order to disclose or identify its experts 3 until June 7th, but the scheduling order doesn't say 4 that the parties are excused from complying with the 5 provision of Rule 30 of the Federal Rules of Civil 6 Procedure that requires that everyone in attendance 7 at a deposition be identified on the record. So for 8 that reason, we continue to object. 9 MR. STONE: Sure. Just briefly, for the 10 record, this objection has been made before. We 11 intend to provide all these individuals when the 12 written transcript comes out, their identities. 13 We'll also be disclosing all of that I think the day 14 after tomorrow pursuant to the scheduling order. So 15 we'll be sharing their identities with the federal 16 government. 17 I'll also note that during the first 18 deposition of Adrian Cortez a couple of weeks ago 19 when this issue first came up, the Department of 20 Justice told us that they would be reaching out after 21 that deposition to discuss it to see if we could work 22 out an agreement on how we were going to handle the 23 situation, and we never heard back from them. 24 So, although they've continued to make 25 the objection, they haven't actually reached out to</p>	<p>8</p> <p>1 drug or medication that would impact your ability to 2 testify truthfully today? 3 A. No, I am not. 4 Q. Are you currently suffering from any illness 5 or impairment that would impact your ability to 6 testify truthfully today? 7 A. No, I am not. 8 Q. Do you understand that your testimony today 9 is given under oath? 10 A. Yes. 11 Q. And it's the same as if you were testifying 12 when we have the jury trial in August in this case -- 13 as if you were testifying before the jury? 14 MR. LYNK: Object to form. 15 A. Yes, I understand this. 16 Q. (BY MR. STONE) Do you understand that during 17 the course of the deposition we may take breaks? 18 A. Yes. 19 Q. And if you need to take a break -- I 20 typically take a break every hour, but if you need to 21 take a break earlier than that, you can just let me 22 know. Do you understand? 23 A. I do. Thank you. 24 Q. But if we do take a break, if there is a 25 pending question, I'll need you to answer the</p>
<p>7</p> <p>1 us to try to work out some kind of arrangement of how 2 we could resolve this. Thank you. 3 THE REPORTER: All right. I need to 4 swear you in, please. 5 THE WITNESS: Yes. 6 (Witness sworn.) 7 JOHN TIMMEL, 8 having been first duly sworn, testified as follows: 9 EXAMINATION 10 BY MR. STONE: 11 Q. Could you -- before we start, I see that you 12 have some documents in front of you. Could you 13 identify the documents in front of you? 14 A. Yes, happy to. And I have a copy of the 15 expert opinion report that I provided to Brian Lynk 16 as well as a supplemental disclosure that I provided 17 to him as well. 18 Q. Okay. Excellent. Go ahead and give me 19 those documents. 20 A. (Complying.) 21 Q. Thank you. Could you spell your name for 22 the record? 23 A. Sure. It's John, J-O-H-N. C, as in 24 Charles. Timmel, T-I-M-M-E-L. 25 Q. Are you currently under the influence of any</p>	<p>9</p> <p>1 question before we go on break. Do you understand? 2 A. I understand. 3 Q. Do you understand that, as you're going back 4 and forth with me in this question-and-answer format, 5 I need you to provide oral answers to my questions? 6 A. Yes, I understand that. 7 Q. Do you understand also that during the 8 course of the deposition there may be objections 9 there are lodged, but you'll still need to answer the 10 question? 11 A. I do. 12 Q. Do you understand if during the course of 13 the deposition I ask any questions that are vague or 14 you're not understanding, that you can ask me to 15 clarify? 16 A. Yes. 17 Q. Do you understand that -- I've got a couple 18 of terms, just to make this -- this a little bit 19 easier. 20 Do you understand when I use the term 21 "IBWC" I'm referring to the International Boundary 22 Water Commission? 23 MR. LYNK: Object to form. 24 A. I do. 25 Q. (BY MR. STONE) And do you understand that</p>

<p>10</p> <p>1 when I use the term "commission" I'm also referring 2 to the IBWC? 3 A. I will accept that, yes. 4 Q. And all references I make to "the IBWC" or 5 "the Commission" I'm generally -- I'm talking about 6 the U.S. section unless I specify otherwise. Do you 7 understand? 8 A. I accept that, yes. 9 Q. Okay. Next, when I refer to the Rio Grande 10 River, I'm not going to be referring to the entire 11 river. I'm specifically going to be referring to the 12 mile markers at issue here, which are mile markers 13 275.5 to 610. Do you understand? 14 A. Yes, I do. 15 Q. So when I say, "Rio Grande River," I mean 16 mile marker 275.5 to 610. 17 A. Yes. 18 Q. Unless I specify otherwise, okay? 19 A. Okay. 20 Q. Similarly, when we use the word "reach," I'm 21 also referring to that same mile marker 275.5 to 610. 22 Do you understand? 23 A. I do. 24 Q. Unless I specify otherwise, okay? 25 A. Okay. If I would like to go beyond that, I</p>	<p>12</p> <p>1 2023 by someone named Brian Lynk, who is an attorney 2 with the Environment Defense Section of the 3 Department of Justice. Do you recall that? 4 A. I do. 5 Q. Do you recognize Brian Lynk? 6 A. I do. 7 Q. Is he here in the room with you today? 8 A. He is. 9 Q. So after you -- you go on to say in the 10 second paragraph -- in the second sentence here -- 11 and tell me if I'm reading this correctly -- I'll see 12 if there's a better way to position myself here. 13 Tell me if I'm reading this correctly, 14 "I responded to Mr. Lynk's email, had several phone 15 conversations with him, and on January 24th, 2024, 16 was notified that I was being retained to review and 17 analyze the situation, circumstances, and evidence 18 described in Section III and IV of this report, and 19 to render opinions as to the impact, if any, the 20 marine floating barrier installed in the Eagle Pass 21 section of the Rio Grande has upon the navigable 22 capacity of that waterway." Did I read that 23 correctly? 24 A. You did. 25 Q. So you said you had several phone</p>
<p>11</p> <p>1 will inform you, and you can let me know. 2 Q. Perfect. Thank you. I appreciate that. 3 So let's get started a little bit. I 4 have a question -- a couple of preliminary questions, 5 but I want to start with what I'm going to mark as 6 Timmel Exhibit 1. This is a copy of your original 7 expert report. 8 Are you able to see that on the screen 9 here? 10 (Timmel Exhibit 1 marked.) 11 A. I'm able to see the title page, yes. 12 Q. Does this appear to be -- what I've marked 13 as Timmel Exhibit 1 to be your initial expert report? 14 A. What I've seen so far, it is, yes. 15 Q. All right. So I want to start with this -- 16 and would it help if I gave you a paper copy? I know 17 that you've got -- you brought a paper copy with you. 18 A. Yes. 19 Q. Would that be helpful to you? 20 A. Yes. Thank you. 21 Q. Absolutely. So I'm handing you a paper copy 22 of what we've marked as Timmel Exhibit 1. 23 I want to ask about this introductory 24 paragraph. You state in the first sentence, correct, 25 that you were contacted by -- on September 28th of</p>	<p>13</p> <p>1 conversations with him between September 28, 2023, 2 and January 24th or 2024, correct? 3 A. That's correct. 4 Q. How many is several? 5 A. Two or three. 6 Q. Two or three. How long were those phone 7 conversations? 8 A. I think they varied. Ten minutes long or 9 so. 10 Q. Was that the average for each of the two to 11 three phone calls? 12 A. I'm just -- I don't have an exact 13 recollection, but I would say somewhere between five 14 and ten minutes per phone call. 15 Q. Okay. Let's see, since you did that initial 16 report -- I'm sharing what I'm marking as Timmel 17 Exhibit 2 -- you have produced last night a 18 supplemental expert report, which I'll hand you a 19 paper copy of. 20 (Timmel Exhibit 2 marked.) 21 A. Thank you. 22 Q. Do you recognize this document? 23 A. I do. 24 Q. What is this? 25 A. Since the submission of my original report,</p>

<p>14</p> <p>1 I went on an additional site inspection trip 2 yesterday on the section of the Rio Grande in the 3 Eagle Pass area with CBP personnel on their vessels, 4 and I also -- since the submission of the report, I 5 received an honor last month, so I wanted to include 6 that in my CV. 7 And then through the course of reviewing 8 some documents that I just received just prior to the 9 submission of my report, doing a more thorough review 10 of them, I discovered some errors that I had based on 11 some testimony from one of the hearings that took 12 place, and I wanted to have the -- my report to be 13 absolutely correct. So I wanted to make you aware of 14 those errors and correct them. 15 Q. When you use the word "CBP," what do you 16 mean? 17 A. Customs and Border Patrol. During the site 18 inspections, I believe there's just some border 19 patrol as well. And there's several agencies there, 20 and they seem to work together, and there will be 21 people from multiple agencies. And so CBP is Customs 22 and Border Patrol. 23 MR. STONE: Objection. Nonresponsive. 24 Q. (BY MR. STONE) So am I understanding that 25 to you customs and border patrol, or CBP, includes</p>	<p>16</p> <p>1 A. Yes, I've seen that document. 2 Q. This is the expert designation that was 3 submitted identifying you on January 24th of 2024, 4 right? 5 A. Yes. 6 Q. This was the same day that you were 7 contacted and told that you would be an ex -- you 8 were being retained as an expert in this case, 9 correct? 10 A. Yes. 11 Q. And at the time on January 24th, when you 12 were notified that you were being retained as an 13 expert in this case -- I'm going to read the 14 highlighted portion on the scene and tell me if I'm 15 reading it correctly. 16 "Captain Timmel is expected to testify 17 regarding the impact upon navigability of the 18 buoy-barrier system deployed in the Rio Grande by the 19 State of Texas." Did I read that correctly? 20 A. You did. 21 Q. Is that what you were retained to testify 22 about in this case? 23 A. That's correct. 24 Q. Next I'm showing you what I've marked as 25 Timmel Exhibit 4.</p>
<p>15</p> <p>1 more than just CBP? 2 A. No. 3 Q. It doesn't include any of the other agencies 4 that CBP interacts with? 5 A. No. 6 Q. So when you use CBP, you just mean customs 7 and border patrol? 8 A. That is correct. 9 Q. Okay. And if at any point in the deposition 10 you use the term "CBP," but you mean something else, 11 will you tell me? 12 A. I will. 13 (Timmel Exhibit 3 marked.) 14 Q. Next I'm showing you what I've marked as 15 Timmel Exhibit 3. 16 Do you see what I've marked as Timmel 17 Exhibit 3 on the screen here? 18 A. I do. 19 Q. Do you recognize the date on this document 20 as January 24th, 2024? 21 A. I can read that date, yes. 22 Q. This was a document that you reviewed in 23 preparation for your expert report, correct? 24 Would you like to see the whole 25 document?</p>	<p>17</p> <p>1 (Timmel Exhibit 4 marked.) 2 Q. This is the expert designation made for you 3 in May. Do you see this document on your screen? 4 A. I do. 5 Q. All right. I'm going to scroll down. Does 6 this document look similar to the prior document? 7 A. It certainly looks similar in format. 8 Q. All right. And this document is dated May 9 3rd, 2024, correct? 10 A. Yes. 11 Q. On page 2 of Timmel Exhibit 4, do you see 12 a -- your expert designation here? 13 A. I see some highlighted text, yes. 14 Q. Okay. I'm going to read the highlighted 15 text and tell me if I read it accurately. 16 A. Okay. 17 Q. "Captain Timmel is expected to testify 18 regarding the nature of the floating barrier system 19 deployed in the Rio Grande by the State of Texas and 20 the floating barrier system's impact upon the 21 navigability of the Rio Grande." Did I read that 22 accurately? 23 A. You did. 24 Q. Okay. 25 MR. STONE: Let's go off the record.</p>

<p>18</p> <p>1 THE VIDEOGRAPHER: Off the record. The 2 time is 9:33. 3 (Recess 9:33 a.m. to 9:36 a.m.) 4 THE VIDEOGRAPHER: We're back on the 5 record. Time is 9:36. 6 Q. (BY MR. STONE) All right. Now, we just 7 read the sentence a moment ago that you are looking 8 at here, the highlighted sentence, right? 9 A. Yes. 10 Q. And now your testimony has changed, right? 11 Before you were testifying about the buoy system's 12 impact on navigability. Now you're also testifying 13 on the nature of the floating buoy-barrier system, 14 correct? 15 MR. LYNK: Object to form. 16 A. That's what that states, yes. 17 Q. (BY MR. STONE) Okay. Do you need a 18 comparison? Will it be easier for you if I show you 19 the January -- 20 A. No, I -- I recall. 21 THE REPORTER: Y'all need to talk one at 22 a time, please. 23 Q. When did the scope of your expert testimony 24 in this case change? 25 MR. LYNK: Object to form.</p>	<p>20</p> <p>1 Q. (BY MR. STONE) Okay. Were you an expert on 2 January 24th of 2024 on the nature of the buoy 3 system, the buoys installed in the Rio Grande River? 4 A. No. 5 Q. On May 3rd, when this document was provided 6 to us, were you an expert on the nature of the 7 floating buoy-barrier system in the Rio Grande River? 8 MR. LYNK: Object to form. 9 A. No. 10 Q. (BY MR. STONE) Are you currently an expert 11 on the nature of the floating buoy-barrier system 12 deployed in the Rio Grande River? 13 A. No. 14 Q. Are you an expert on the floating barrier 15 system's impact upon the navigability of the Rio 16 Grande River? 17 A. I offer opinions on that, yes. 18 Q. So next I'm going to show you what I'm 19 marking as Timmel Exhibit 6. 20 (Timmel Exhibit 6 marked.) 21 Q. All right. Do you see this document on the 22 screen? 23 A. I do. 24 Q. Does this appear to be an email exchange you 25 had with Brian Lynk?</p>
<p>19</p> <p>1 A. Well, it certainly would have changed over 2 the course of the time between that January 24th date 3 and the date of this document. 4 MR. STONE: Object as nonresponsive. 5 Q. (BY MR. STONE) I'm asking you when 6 specifically the scope of your expert designation, if 7 you know, changed. 8 MR. LYNK: Object to form. 9 A. Well, I'm reading what that states, but 10 the -- what I am testifying to is spelled out in the 11 scope of the report that I include in my report. 12 There -- that says the "nature of the buoy system." 13 Primarily what I did in the report was 14 discuss that -- to the extent necessary, that I can 15 cover the topics that are included in the scope of 16 the report. 17 MR. STONE: Objection, nonresponsive. 18 Q. (BY MR. STONE) I'm showing you what I've 19 marked as Timmel Exhibit 3, the second page of it. 20 Do you see it on the screen? 21 A. I do. 22 Q. There's no mention of you being an expert on 23 the nature of the buoy system, is there? 24 MR. LYNK: Object to form. 25 A. No, there's not.</p>	<p>21</p> <p>1 A. It does. 2 Q. Okay. I want to start at the bottom. But 3 let's situate ourselves in time. 4 So January 24th, 2024, you testified a 5 moment ago that that's when you were contacted and 6 notified that you were being retained as an expert in 7 this case, right? 8 A. That is correct. 9 Q. So an January 26th, 2024, you sent this 10 email to -- two days later you sent this email to 11 Brian Lynk, correct? 12 A. Yes. 13 Q. And what do you say in this email here on 14 page 2 of what we've marked as Timmel Exhibit 6 to 15 Brian Lynk? 16 A. Would you like me to read that? 17 Q. Yes, go ahead and read it. 18 A. Okay. "Attached please find proposed review 19 questions for the CBP and IBWC officers, and any 20 other appropriate operators in Eagle Pass. It is in 21 somewhat of a raw form, but I want to get it to you 22 ASAP. I would be happy to discuss it with you 23 tonight or tomorrow afternoon if you would like. 24 Please be advised that I will have extremely limited 25 access to telephone or email until mid-afternoon. If</p>

<p style="text-align: right;">22</p> <p>1 you need to reach me tomorrow, text will be the best 2 method of communication." 3 Q. So you typed up -- if I'm reading this 4 correctly -- a list of interview questions for CBP 5 and IBWC. Is that correct? 6 A. That's correct. 7 Q. And just for identification purposes, before 8 we move on, I want to confirm that I have a copy of 9 those documents. So let's take a look. 10 I'm showing you what I'm marking as 11 Exhibit 7, Timmel Exhibit 7. 12 (Timmel Exhibit 7 marked.) 13 Q. Do you see Timmel Exhibit 7 on your screen? 14 A. I do. 15 Q. Do you recognize this document? 16 A. I do. 17 Q. Is this the interview questions that you 18 sent to Brian Lynk? 19 A. Yes. 20 Q. Now, I see that there's two dates on this 21 document. It says, "Questions" on January 6th of 22 2024, right? 23 A. January 26. 24 Q. Sorry. January 26th of 2024? 25 A. Yes, uh-huh.</p>	<p style="text-align: right;">24</p> <p>1 after February 1st of 2024? 2 A. I don't recall precisely, but there was 3 either some edits made to it or additional questions 4 added. 5 Q. When you say there was "edits made to it," 6 did you make the edits? 7 A. Yes. If there were any made, I would have 8 made them. 9 Q. And if there was any questions added, would 10 you have added them? 11 A. That's correct. 12 Q. Did you also type in what appears to be the 13 answers on this document? 14 A. No, I did not. I believe this was a copy of 15 the questions that I submitted to the DOJ that were 16 sent to the CBP and that this was then sent back to 17 me with the answers on them. 18 Q. Who filled in the answers to these 19 questions, if you know? 20 A. I do not know. 21 Q. But you relied on these answers in your 22 expert report? 23 A. Yes. 24 Q. Okay. So let's go back to what I've marked 25 as Exhibit -- I'm not going to do share screen</p>
<p style="text-align: right;">23</p> <p>1 Q. And then it says it was amended on 2 February 1st of 2024, right? 3 A. Yes, it did. 4 Q. How was it -- how was this document amended? 5 A. I don't recall just by looking at that 6 document. 7 Q. Did you amend the document? 8 A. I could have made some changes or added some 9 questions to it after the 26th, yes. 10 Q. Did you create this document? 11 A. I did. 12 Q. Is this the way that the document looked 13 when you originally created it? 14 A. Can you scroll down a little bit. 15 Q. Sure. 16 A. No, the other way please. 17 Q. Oh, up? 18 A. Up yes, uh-huh. Yes, I'm fairly certain 19 that I created that document. 20 Q. Okay. So I see "Questions - 1/26/24" here 21 at the top of the document. Do you see it? 22 A. Yes. 23 Q. But I don't see any subsequent indication 24 that there was more questions after February 1st of 25 2024. Is that -- were there subsequent questions</p>	<p style="text-align: right;">25</p> <p>1 anymore, just because it's a little bit easier. I 2 may switch back later, but for now it's a little bit 3 easier if I keep going without it. 4 So on February 14th you receive a 5 response to your email, correct? 6 A. Yes, I did receive that email. 7 Q. And so for the record, I'm on Timmel 8 Exhibit 6 at page 1. 9 Could you read the response that you 10 received on February 14th of 2024? 11 A. "Good afternoon, Brian. With many thanks to 12 David for tracking down some responses in advance of 13 Tuesday and site visit. Please see attached. Both 14 David and Patrol Agents in Charge (PAIC) Micky 15 Donaldson will be available to discuss and [sic] 16 follow up questions -- discuss any follow up 17 questions with Timmel during the visit. To the 18 extent any questions arise that they are unable to 19 run down in the moment, we will do our best to circle 20 back as soon as possible following the site visit. 21 Thanks. Best, Kaitlyn." 22 Q. And this email, it was forwarded to you, 23 right? 24 A. That is correct. 25 Q. It was actually sent to -- it appears to</p>

<p>26</p> <p>1 have been sent to Brian Lynk. Is that accurate?</p> <p>2 A. That's what it appearance to be, yes.</p> <p>3 Q. Who is Kaitlyn Charette?</p> <p>4 A. Well, just by reading it, she's the senior</p> <p>5 attorney with the legal counsel division of the</p> <p>6 office of general counsel, the U.S. Department of</p> <p>7 Homeland Security.</p> <p>8 Q. This email mentions someone named David. Do</p> <p>9 you know who David is?</p> <p>10 A. I do not.</p> <p>11 Q. It also mentions Patrol Agent in Charge</p> <p>12 Mickey Donaldson.</p> <p>13 A. Let me retract that. It may refer to David</p> <p>14 Sorola, who is a counselor for -- I'm trying to</p> <p>15 remember his agency -- I think Immigration.</p> <p>16 Q. Do you know if that's referring to David</p> <p>17 Sorola?</p> <p>18 A. I do not know for sure that it is, no.</p> <p>19 Q. Is David Sorola someone who is identified as</p> <p>20 being carbon copied on this email?</p> <p>21 A. It appears that he is, yes. Yes, it says</p> <p>22 "David Sorola" there.</p> <p>23 Q. Did you actually meet somebody named David</p> <p>24 Sorola -- strike that.</p> <p>25 Have you met -- have you -- strike that.</p>	<p>28</p> <p>1 Timmel Exhibit 6, page 1, does this</p> <p>2 appear to be -- the top of this email thread, this</p> <p>3 appears to be Brian Lynk forwarding you a copy of</p> <p>4 that email that we just read. Does that appear</p> <p>5 accurate?</p> <p>6 A. That appears accurate, yes.</p> <p>7 Q. And it appears that there's an attachment to</p> <p>8 this email. Is that correct?</p> <p>9 A. Yes.</p> <p>10 Q. Could you read the body of this email for</p> <p>11 the record?</p> <p>12 A. "Good evening, John. Attached please find</p> <p>13 answers from the CBP to written questions you</p> <p>14 provided me on January 26th and (in amended form) on</p> <p>15 February 1st and asked me to circulate. As noted</p> <p>16 below the CBP -- as noted below, CBP representatives</p> <p>17 will be available to answer any follow-up questions</p> <p>18 you may have during the Tuesday site visit -- site</p> <p>19 tour. Signed Brian Lynk."</p> <p>20 Q. And is that attachment what we've been</p> <p>21 looking at as -- and what we have marked as Timmel</p> <p>22 Exhibit 7?</p> <p>23 A. I believe it is, yes.</p> <p>24 Q. So this was provided to you -- this document</p> <p>25 with these responses was provided to you by the</p>
<p>27</p> <p>1 Have you spoken with anybody named David</p> <p>2 Sorola in this case?</p> <p>3 A. I have.</p> <p>4 Q. When did you speak with David Sorola?</p> <p>5 A. I spoke with him first on my first site</p> <p>6 inspection on February 24th, and I spoke with him</p> <p>7 again yesterday for a second site inspection.</p> <p>8 Q. Who is David Sorola?</p> <p>9 A. He is, to the best of my knowledge, an</p> <p>10 attorney for Department of Homeland Security within</p> <p>11 the -- I guess within the CBP there, works in Del Rio,</p> <p>12 Texas.</p> <p>13 Q. How -- we're going to come back to the</p> <p>14 conversation with David Sorola, but let me move on to</p> <p>15 the Micky Donaldson. Do you know a Micky Donaldson?</p> <p>16 A. Not that I recall.</p> <p>17 Q. Have you spoken with a Micky Donaldson about</p> <p>18 this case?</p> <p>19 A. I would not have known that -- excuse me. I</p> <p>20 spoke with many people during the inspections whose</p> <p>21 names I did not know.</p> <p>22 Q. Okay. We're going to get into that in a few</p> <p>23 minutes. Let me keep going.</p> <p>24 So at the top here I see the email --</p> <p>25 does this -- strike that. Let me start again.</p>	<p>29</p> <p>1 attorney Brian Lynk in this case?</p> <p>2 A. Yes.</p> <p>3 Q. But you don't know who actually filled out</p> <p>4 the answers to this document?</p> <p>5 A. I don't actually, no.</p> <p>6 Q. Next I want to show what I'm marking as</p> <p>7 Timmel Exhibit -- I'm sorry, I jumped ahead -- Timmel</p> <p>8 Exhibit 8. I went ahead and shared 9 with you guys,</p> <p>9 but we'll get there.</p> <p>10 (Timmel Exhibit 8 marked.)</p> <p>11 Q. Timmel Exhibit 8. This is another set of</p> <p>12 emails that were exchanged, and I want to go through</p> <p>13 this.</p> <p>14 So starting at page -- well, let me stop</p> <p>15 for a minute and see. Do you recognize this email</p> <p>16 exchange?</p> <p>17 A. I would have to look at the entire document</p> <p>18 to be certain.</p> <p>19 Q. Sure. Do you see -- on Timmel Exhibit 8 do</p> <p>20 you see your email or name on the email --</p> <p>21 A. I do.</p> <p>22 Q. -- at the top? And this was a forward that</p> <p>23 you received from Brian Lynk in this case?</p> <p>24 A. That's correct.</p> <p>25 Q. And as I scroll down, there is a series of</p>

<p>30</p> <p>1 emails that were exchanged that were forwarded to you</p> <p>2 by Brian Lynk?</p> <p>3 A. Yes.</p> <p>4 Q. All right. So starting at the bottom with</p> <p>5 the first email, what date was this sent?</p> <p>6 A. I'm confused as to that header. It</p> <p>7 appears -- okay, that header is for the email on the</p> <p>8 continuing page. It was sent on February 12th.</p> <p>9 Q. Okay.</p> <p>10 A. 2024.</p> <p>11 Q. All right. And there's a number of folks</p> <p>12 that are carbon -- that this was sent -- this email</p> <p>13 was sent to, right?</p> <p>14 A. Yes, sir.</p> <p>15 Q. The first name I see is Rebecca Rizzuti. Do</p> <p>16 you see that name?</p> <p>17 A. I do see that name.</p> <p>18 Q. Before I start with who it was sent to,</p> <p>19 let's talk about who it was sent from.</p> <p>20 Do you recognize this the name Jerry</p> <p>21 Wall?</p> <p>22 A. I believe I've heard the name since I've</p> <p>23 been retained for this case, but I don't know who</p> <p>24 that person is.</p> <p>25 Q. Have you talked about the case with Jeremy</p>	<p>32</p> <p>1 Gomez, to the best of your knowledge, about this</p> <p>2 case?</p> <p>3 A. Not that I'm aware of. Again, I've spoke</p> <p>4 with many people during the site inspections with the</p> <p>5 CBP and some of their ancillary groups, and I don't</p> <p>6 know all of their names.</p> <p>7 Q. During the site visit, did you speak with</p> <p>8 any IBWC people?</p> <p>9 A. I believe that I did, but I cannot say with</p> <p>10 certainty.</p> <p>11 Q. The next in this list is Juan Uribe. Do you</p> <p>12 remember -- do you recognize the name Juan Uribe?</p> <p>13 A. I do not.</p> <p>14 Q. Have you spoken about this case with a Juan</p> <p>15 Uribe, to the best of your knowledge?</p> <p>16 A. Not to the best of my knowledge.</p> <p>17 Q. Next is a Francisco Martinez. Do you</p> <p>18 recognize that name?</p> <p>19 A. I do not.</p> <p>20 Q. Have you spoken about this case, to the best</p> <p>21 of your knowledge, with a Francisco Martinez?</p> <p>22 A. Not unless he was present at the site</p> <p>23 inspections.</p> <p>24 Q. Was he present?</p> <p>25 A. I do not know.</p>
<p>31</p> <p>1 Wall?</p> <p>2 A. I have not.</p> <p>3 Q. Jeremy Wall sends the email to a number of</p> <p>4 people, right?</p> <p>5 A. Yes, according to what the document states.</p> <p>6 Q. Right. The document you relied on?</p> <p>7 A. Yes.</p> <p>8 Q. And the first name on the email that it was</p> <p>9 sent to is Rebecca Rizzuti. Do you recognize that</p> <p>10 name?</p> <p>11 A. I do not.</p> <p>12 Q. Have you talked about this case with Rebecca</p> <p>13 Rizzuti?</p> <p>14 A. I have not.</p> <p>15 Q. The next name on the email thread is Evelio</p> <p>16 Siller. Do you recognize that name?</p> <p>17 A. No, I do not.</p> <p>18 Q. Have you discussed this name [sic] with</p> <p>19 Evelio Siller?</p> <p>20 A. No, I have not.</p> <p>21 Q. The next name on this email thread is -- or</p> <p>22 the email is Mario Gomez. Do you recognize that</p> <p>23 name?</p> <p>24 A. No, I do not.</p> <p>25 Q. Have you had any conversations with Mario</p>	<p>33</p> <p>1 Q. So to the best of your knowledge you haven't</p> <p>2 discussed this case with someone named Francisco</p> <p>3 Martinez?</p> <p>4 A. I would say I'm uncertain as to whether I</p> <p>5 have. So if that's the same as "to the best of my</p> <p>6 knowledge," then I would answer that yes.</p> <p>7 Q. You're uncertain about who you spoke about</p> <p>8 with this case during the site visit as it relates to</p> <p>9 anyone, right?</p> <p>10 MR. LYNK: Object to form.</p> <p>11 A. No. Can I recall their names? No, I</p> <p>12 cannot.</p> <p>13 Q. (BY MR. STONE) Okay. Jennifer Pena is the</p> <p>14 next name on this list. Do you recognize the name</p> <p>15 Jennifer Pena?</p> <p>16 A. I do not.</p> <p>17 Q. To the best of your knowledge have you</p> <p>18 discussed this case with a Jennifer Pena?</p> <p>19 A. No.</p> <p>20 Q. The next name on this list is Adrian Cortez.</p> <p>21 Do you recognize that name?</p> <p>22 A. No, I do not.</p> <p>23 Q. Have you discussed this case with someone</p> <p>24 named Adrian Cortez?</p> <p>25 A. Not to the best of my knowledge.</p>

<p>34</p> <p>1 Q. So let's talk about the contents of this 2 email. It begins with -- and I'm on page 2 of Timmel 3 Exhibit 8 -- "All, for WAD equipment, see below, 4 separated by field office." Did I read that 5 correctly? 6 A. You did. 7 Q. What is WAD? 8 A. I'm not certain. I do not know. 9 Q. Okay. So the first -- we'll start from the 10 begi -- top, it says, "Mercedes," right? 11 A. Yes. 12 Q. Okay. What is Mercedes? 13 A. And individual who apparently responded to 14 some of these questions. 15 Q. I see. So Mercedes is a person. Was it one 16 of the persons that we discussed a moment ago that 17 the email was sent to? 18 A. I don't recall. 19 Q. Okay. So it looks like the person named 20 Mercedes lists four different things here. Is that 21 accurate? 22 A. Yes, there's four things enumerated, yes. 23 Q. Okay. Can you read number 1? 24 A. "Fan boat, 20 feet. Use it for tours for 25 IBWC HQ personal. Use it on Rio Grande, Arroyo,</p>	<p>36</p> <p>1 Q. How much weight can a -- let's go with what 2 your estimate was. Is that okay? 3 A. Sure. 4 Q. All right. So we've got a 20 feet by 8 feet 5 fanboat, right? 6 A. Yes, sir. 7 Q. Okay. How many people can ride on a -- 8 strike that. 9 What would be the weight capacity of a 10 20-foot by 8-foot fanboat? 11 A. I do not know. 12 Q. Okay. So you don't know the weight 13 capacity. How many people could ride in a 8 by 14 20-foot fanboat? 15 A. During our site inspections we had five 16 individuals riding on them. There could potentially 17 have been a few more. But on boats there are 18 capacity plates that are attached on the inside of 19 the hull that specify the maximum weight and/or 20 number of passengers. I did not inspect that plate. 21 MR. STONE: Objection. Nonresponsive. 22 Q. (BY MR. STONE) Do you know if -- let me 23 start again. 24 When you went down to the Rio Grande 25 River and did this inspection, did you ride on a</p>
<p>35</p> <p>1 Colorado, and flood ways (depth varies)." 2 Q. What are the dimensions of that fanboat as 3 discussed in number 1? 4 A. As discussed in number 1, approximately 5 20 feet in length. 6 Q. And the width? 7 A. I would estimate -- it's not stated. I do 8 not know for certain, but I estimate, 8 -- 8 to 9 9 feet. 10 Q. And what is the basis for that estimate if 11 you don't know what -- well, let me step back. 12 Do you know what fanboat is being 13 discussed here Mercedes? 14 A. Not specifically, no. 15 Q. So without knowing specifically what kind of 16 fanboat is being discussed by Mercedes, how do you 17 know that it's -- what did you say, 8 feet in width? 18 A. I would estimate that a fanboat that is 19 20 feet in length would be about 8 feet in width, but 20 I do not know with certainty. 21 Q. Could it be -- could it have a greater width 22 than 8 feet? 23 A. It could. 24 Q. Could it have a smaller width than 8 feet? 25 A. It could.</p>	<p>37</p> <p>1 fanboat that was 20 feet by 8 feet? 2 A. I rode on a fanboat or airboat that was 3 approximately of those dimensions. 4 Q. Okay. And you testified a -- you don't 5 remember, though, what the weight capacity was on 6 those fanboats that you rode during the site visit? 7 A. That's correct. 8 Q. But that's information that is available 9 because there's a little sign on the boat that tells 10 you what the weight capacity is? 11 A. Generally, yes. 12 Q. When you say, "generally, yes," I'm not 13 asking generally. I'm asking about the fanboats that 14 you rode. 15 A. I did not see -- look to see if there were 16 capacity plates on those boats. 17 Q. What is the minimum depth that a fanboat 18 that is 8 by 20 needs to operate? 19 A. Actually zero. 20 Q. Is it fair to say that it could literally 21 operate on grass? 22 A. On wet grass, yes, or a slippery surface, 23 yes. Ice. 24 Q. So let's move on to number 2 on this list. 25 I'm on Timmel Exhibit 8, number 10. So Mercedes</p>

<p>38</p> <p>1 tells you next about number -- can you read that for 2 the record?</p> <p>3 A. Number 2: "Kayaks approximately eight feet, 4 measures water in vicinity of gages, depth changes 5 with river height."</p> <p>6 Q. And what are the approximate dimensions of 7 the kayak that's referenced here?</p> <p>8 A. Well, what is given is approximately 8 feet 9 in length.</p> <p>10 Q. And what's the width of the kayak?</p> <p>11 A. It's not stated.</p> <p>12 Q. Do you know what the width of the kayak is 13 that's being discussed by Mercedes?</p> <p>14 A. I do not.</p> <p>15 Q. How many people can ride in a -- in the 16 kayak discussed in number 2?</p> <p>17 A. Would you like my estimation or -- kayaks 18 come in --</p> <p>19 Q. Let me clarify. I'm not asking you to 20 guess. I'm asking if you know.</p> <p>21 A. I do -- I'm sorry, I do not know.</p> <p>22 Q. So if you know, what is the weight capacity 23 of the kayaks that are discussed in number 2 by 24 Mercedes?</p> <p>25 A. I do not know.</p>	<p>40</p> <p>1 Q. Next, could you read number 4?</p> <p>2 A. 4, "ADCP (acoustic measuring devices), used 3 suspended from cable at depths greater than one meter 4 or wading instream (walking with equipment on 5 telescoping pole in the water) at depths below one 6 meter in vicinity of gages."</p> <p>7 Q. What kind of craft is being described -- 8 well, strike that.</p> <p>9 What is ADCP?</p> <p>10 A. I do not know.</p> <p>11 Q. Is that a type of boat?</p> <p>12 A. I don't know.</p> <p>13 Q. Okay. So in forming your expert opinions in 14 this case from the email -- this portion of the email 15 that was sent from Mercedes, which portions of this 16 email did you rely on in forming your expert opinions 17 in this case?</p> <p>18 A. None.</p> <p>19 Q. None. Okay.</p> <p>20 Next you receive an email from -- well, 21 it says -- it appears to say, "Falcon." Is that 22 accurate?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Is Falcon a person?</p> <p>25 A. Looking at these now, seeing more of this</p>
<p>39</p> <p>1 Q. Let's go to number three. "Remote 2 control" -- well, you read it. Sorry. Could you 3 read number three for the record?</p> <p>4 A. "Remote control boats (one 3 feet and one 5 five feet) used in vicinity of gages."</p> <p>6 Q. How many people can ride in -- we'll start 7 with the first one -- in a 3-foot remote control 8 boat?</p> <p>9 A. I do not know specifically about these boats 10 that are being described, but I would say none.</p> <p>11 Q. Why would you say none?</p> <p>12 A. Because it's a three foot long boat, and I 13 don't see how an individual could fit on that.</p> <p>14 Q. How many boats that are three feet long are 15 there out there that people can ride in?</p> <p>16 A. I'm not aware of any.</p> <p>17 Q. The next one is 5-foot, right?</p> <p>18 A. Yes.</p> <p>19 Q. How many people could ride in the 5-foot 20 remote control boat discussed in number 3, if you 21 know?</p> <p>22 A. I do not know.</p> <p>23 Q. Do you know what the weight capacity is for 24 the 5-foot boat mentioned by Mercedes in number 3?</p> <p>25 A. No.</p>	<p>41</p> <p>1 email, I believe these are the different dams and/or 2 gage sites on the river. I know Amistad is and 3 Presidio is, yes.</p> <p>4 Q. Okay. So you recognize the names Falcon, 5 Amistad and Presidio on this email?</p> <p>6 A. That's correct.</p> <p>7 Q. But you didn't recognize the name Mercedes?</p> <p>8 A. Not in the context in which it was 9 presented.</p> <p>10 Q. Well, now you have seen the full context. 11 Where is Mercedes on the Rio Grande River?</p> <p>12 A. I do not know.</p> <p>13 Q. But you said you didn't rely on it --</p> <p>14 A. No, I didn't rely on that.</p> <p>15 Q. Okay. So next it says, "Falcon." Let's go 16 through each of these six. Let's start at the top.</p> <p>17 Could you read the first one relating to 18 Falcon Dam? Sorry. Strike that. Let me start 19 again.</p> <p>20 Could you read the first one relating to 21 Falcon?</p> <p>22 A. If I may, I can possibly save you some time 23 by saying I did not rely on any information in that 24 paragraph in forming my opinions.</p> <p>25 Q. I see. Okay.</p>

<p style="text-align: right;">42</p> <p>1 A. But I'm happy to read it if you would like.</p> <p>2 Q. I think it would be helpful. Let's go</p> <p>3 through a couple of them and we'll see, okay?</p> <p>4 A. Okay.</p> <p>5 Q. Start with number one.</p> <p>6 A. Sure. "20-foot dual motor johnboat. Used</p> <p>7 within a mile or so of each gage, used within the</p> <p>8 first three miles below Falcon reservoir and in the</p> <p>9 reservoir itself. Used for measuring, help with dam</p> <p>10 operations, tours to HQ, and others agencies."</p> <p>11 Q. Is it your testimony -- well, you didn't --</p> <p>12 actually, you didn't rely on this. Is it your</p> <p>13 testimony that a 20-foot dual motor johnboat could</p> <p>14 operate on the Rio Grande River?</p> <p>15 A. Yes.</p> <p>16 Q. What is the basis for your opinion that a</p> <p>17 20-foot dual motor johnboat can operate on the Rio</p> <p>18 Grande River?</p> <p>19 A. I've seen them operate.</p> <p>20 Q. And did you travel the -- when did you</p> <p>21 travel the entire stretch of the Rio Grande River?</p> <p>22 MR. LYNK: Object to form.</p> <p>23 A. I'm sorry. I thought that you were talking</p> <p>24 about mile 275 to 600 --</p> <p>25 Q. (BY MR. STONE) Yeah, okay. That's helpful.</p>	<p style="text-align: right;">44</p> <p>1 the Rio Grande River. Do you recall that?</p> <p>2 A. I do.</p> <p>3 Q. Okay. So I'm going to ask that again. Can</p> <p>4 a 20-foot dual motor johnboat travel from mile marker</p> <p>5 275.5 to mile marker 610?</p> <p>6 A. I do not know.</p> <p>7 Q. Other than the five-mile stretch that you</p> <p>8 were on on the Rio Grande River, do you have any</p> <p>9 personal knowledge of any other sections of the river</p> <p>10 where a 20-foot dual motor johnboat could operate?</p> <p>11 A. No.</p> <p>12 Q. What is the -- let me move on. Since you</p> <p>13 didn't rely on this, I'm going to keep going.</p> <p>14 Next there on Timmel Exhibit 8, we have</p> <p>15 a discussion about Amistad. Do you see that on the</p> <p>16 screen?</p> <p>17 A. I do.</p> <p>18 Q. Did you rely on any of the information in</p> <p>19 this portion of the email for your expert opinions in</p> <p>20 this case?</p> <p>21 A. The only thing that I relied upon in forming</p> <p>22 my opinions regarding Amistad was discussions with</p> <p>23 the people conducting the site inspections. I asked</p> <p>24 them about changing in water levels, and they said</p> <p>25 yes, they did occur, and they occurred when Amistad</p>
<p style="text-align: right;">43</p> <p>1 Thank you. I am talking about that stretch.</p> <p>2 So when did you travel the Rio Grande</p> <p>3 River mile marker 275.5 to mile marker 610?</p> <p>4 A. I have not, but that's not the question that</p> <p>5 you asked.</p> <p>6 Q. All right. The question I'm asking is when</p> <p>7 did you travel --</p> <p>8 A. I have not.</p> <p>9 Q. Okay. How many miles between mile marker</p> <p>10 275.5 and 610 have you traveled on the Rio Grande</p> <p>11 River?</p> <p>12 A. I would estimate approximately five miles.</p> <p>13 Q. So out of the 300-plus miles within that</p> <p>14 reach, you've only been on the water for</p> <p>15 approximately five miles of that stretch?</p> <p>16 A. Yes, I've crossed the Rio Grande as a</p> <p>17 tourist in other places, but actually on the water,</p> <p>18 approximately five miles in the Eagle Pass area.</p> <p>19 Q. So is it your testimony today that with</p> <p>20 respect to that five-mile stretch a 20-foot dual</p> <p>21 motor johnboat could operate?</p> <p>22 A. Yes.</p> <p>23 Q. A moment ago I asked you, though, if a</p> <p>24 20-foot dual motor johnboat could operate on the</p> <p>25 entire reach of -- from mile marker 275.5 to 610 on</p>	<p style="text-align: right;">45</p> <p>1 released water. So I'm aware of that.</p> <p>2 MR. STONE: Objection. Nonresponsive.</p> <p>3 Q. (BY MR. STONE) I'm asking you if you relied</p> <p>4 on the information in Timmel Exhibit 8 on page 2 as</p> <p>5 it relates to this discussion about Amistad.</p> <p>6 A. No.</p> <p>7 Q. Did you rely on the information in Timmel</p> <p>8 Exhibit 8 as it relates to discussion about Presidio?</p> <p>9 A. No.</p> <p>10 Q. Did you rely on the information contained in</p> <p>11 Timmel Exhibit 8 as it relates El Paso?</p> <p>12 A. No.</p> <p>13 Q. So looking at this email, is there anything</p> <p>14 in this portion of the email, Timmel Exhibit 8, pages</p> <p>15 2 and 3 -- it keeps going -- is there anything in</p> <p>16 this email that you relied on for your expert</p> <p>17 opinions in this case?</p> <p>18 A. No.</p> <p>19 Q. Next I'm going to show you what I'm marking</p> <p>20 as Timmel Exhibit 9.</p> <p>21 (Timmel Exhibit 9 marked.)</p> <p>22 Q. Let me close this. This is also an email</p> <p>23 exchange. Let me start at the top.</p> <p>24 Do you see your -- so I'm on Timmel</p> <p>25 Exhibit 9. Do you see your name at all on the top of</p>

<p style="text-align: right;">46</p> <p>1 this document as a recipient of this email?</p> <p>2 A. I do not.</p> <p>3 Q. Do you know if you received this email?</p> <p>4 A. If that's part of a thread of another email</p> <p>5 that has my name as a recipient, then I would say</p> <p>6 yes. I do not know by viewing this, what you have on</p> <p>7 the screen, as to whether or not I received it.</p> <p>8 Q. Did you rely -- can you tell if you relied</p> <p>9 on any of the information contained in this email for</p> <p>10 your expert opinions?</p> <p>11 A. I did not.</p> <p>12 MR. LYNK: Object to form. Sorry. Go</p> <p>13 ahead.</p> <p>14 A. I did not.</p> <p>15 Q. (BY MR. STONE) Okay. Let me do it piece by</p> <p>16 piece, just to make sure, okay?</p> <p>17 So I'm going to start Timmel Exhibit 9.</p> <p>18 We have the first email sent from Juan Uribe on</p> <p>19 February 12th of 2024, page 1. Did you rely on the</p> <p>20 information contained in this email in forming your</p> <p>21 expert opinions in this case?</p> <p>22 MR. LYNK: Object to form.</p> <p>23 A. No.</p> <p>24 Q. (BY MR. STONE) Okay. Next email, and it</p> <p>25 goes backwards in time. The next email is still</p>	<p style="text-align: right;">48</p> <p>1 recipient of this email?</p> <p>2 A. I do not see my name listed, no.</p> <p>3 Q. Did you rely on any of the information</p> <p>4 contained in this email in forming your opinions in</p> <p>5 this case?</p> <p>6 A. In that entire email, you would have to</p> <p>7 scroll down.</p> <p>8 Q. Oh, sure.</p> <p>9 A. Can you stop where it said, "Amistad,"</p> <p>10 please? (Reading document.) No, I did not.</p> <p>11 Q. Finally, I'm on page 3 of Timmel Exhibit 9.</p> <p>12 I'm showing you an email sent from Rebecca Rizzuti on</p> <p>13 February 11th of 2024. Do you see that email?</p> <p>14 A. I do.</p> <p>15 Q. Is your name listed as one of the</p> <p>16 recipients?</p> <p>17 A. No, it is not.</p> <p>18 Q. Did you rely on any of the information</p> <p>19 contained in this email in forming your expert</p> <p>20 opinions in the case?</p> <p>21 A. No.</p> <p>22 Q. Next I'm showing you what I'm marking as</p> <p>23 Exhibit 10.</p> <p>24 (Timmel Exhibit 10 marked.)</p> <p>25 Q. Do you see this document on your screen?</p>
<p style="text-align: right;">47</p> <p>1 contained on page 1 of Timmel Exhibit 9. This is an</p> <p>2 email sent from Rebecca Rizzuti on February 12th of</p> <p>3 2024.</p> <p>4 Did you rely on any of the information</p> <p>5 contained this email in forming your expert opinions</p> <p>6 in this case?</p> <p>7 A. Based on what's on the -- what I'm seeing on</p> <p>8 the screen, I did not.</p> <p>9 Q. Next I'm showing you -- I'm going to do it</p> <p>10 piece by piece. I'm showing you what I've marked as</p> <p>11 Timmel Exhibit 9, page 2, an email from Esteban</p> <p>12 Martinez. Do you see it on the screen?</p> <p>13 A. I do.</p> <p>14 Q. Do you also see that you are not a recipient</p> <p>15 of this mail?</p> <p>16 A. I see that.</p> <p>17 Q. All right. Did you rely on any of the</p> <p>18 information contained in this email in forming your</p> <p>19 opinions in this case?</p> <p>20 A. No.</p> <p>21 Q. Next I have an email, same page, sent from</p> <p>22 Jeremy Wall on February 12th of 2024. Do you see</p> <p>23 that on the screen?</p> <p>24 A. I do.</p> <p>25 Q. Do you see that your name is not a listed</p>	<p style="text-align: right;">49</p> <p>1 A. I do.</p> <p>2 Q. This appears to be an email sent to you from</p> <p>3 Brian Lynk on February 29th of 2024, correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Actually, before we get there, you had a</p> <p>6 site visit prior to February 29th of 2024, correct?</p> <p>7 A. That's correct.</p> <p>8 Q. When did you have a site visit?</p> <p>9 A. On February 24th and then one yesterday.</p> <p>10 Q. So I'm just going to -- we'll talk about the</p> <p>11 one you did yesterday shortly. Let's start with just</p> <p>12 the February 24th visit, okay?</p> <p>13 A. Sure.</p> <p>14 Q. When did you -- did you book that trip?</p> <p>15 A. I requested that trip, but I did not -- I</p> <p>16 booked the transportation to get me to Texas, but I</p> <p>17 did not book it with CBP.</p> <p>18 Q. What were the dates of your travel for the</p> <p>19 site visit?</p> <p>20 A. Well, I flew into San Antonio. I'm assuming</p> <p>21 that would have been the -- I can make assumptions</p> <p>22 for you. I can look in my records if that's</p> <p>23 important. But if you would like me to make</p> <p>24 assumptions, I'm happy to.</p> <p>25 Q. I'm not asking you to make assumptions. I'm</p>

<p>50</p> <p>1 just asking if you know. Do you know when you</p> <p>2 arrived for the site visit in Texas?</p> <p>3 A. In the day or two preceding the visit.</p> <p>4 Q. How long was the visit to Texas during which</p> <p>5 you conducted a site visit at Eagle Pass?</p> <p>6 A. Three days.</p> <p>7 Q. Three days. Did you visit Eagle Pass on the</p> <p>8 first day of that visit?</p> <p>9 A. No.</p> <p>10 Q. What did you do on the first day of your</p> <p>11 visit?</p> <p>12 A. Flew into San Antonio.</p> <p>13 Q. What did you do after you landed?</p> <p>14 A. Went to the hotel.</p> <p>15 Q. What did you do after you checked into the</p> <p>16 hotel?</p> <p>17 A. Moved into the room and most likely went and</p> <p>18 had dinner.</p> <p>19 Q. Did you discuss this case at all on the</p> <p>20 first day of your site visit?</p> <p>21 A. I met with Brian Lynk, and we had some</p> <p>22 discussions, yes.</p> <p>23 Q. Were those discussions over dinner?</p> <p>24 A. I'm not certain. They were in the evening,</p> <p>25 though.</p>	<p>52</p> <p>1 Kimere was there, but I don't recall her last name;</p> <p>2 Brian Lynk; there was a gentleman from the Corps of</p> <p>3 Engineers in the Houston area; there was a gentleman</p> <p>4 from probably Chicago. He's a professor at Loyola</p> <p>5 University; and there were a few others, but I don't</p> <p>6 recall all their names.</p> <p>7 Q. So I've got Brian Lynk, Kimere -- Kimere?</p> <p>8 A. Yes, uh-huh.</p> <p>9 Q. Someone from the Houston office, U.S. Army</p> <p>10 Corps of Engineers, and a professor from Chicago?</p> <p>11 A. Right.</p> <p>12 Q. So four folks.</p> <p>13 A. Yes. But there were some more -- there was</p> <p>14 a lady who was with the U.S. attorney's office, and I</p> <p>15 think another U.S. attorney and myself, and that's</p> <p>16 all that I can recall.</p> <p>17 Q. Okay. So I've got Brian Lynk and Kimere.</p> <p>18 I've got two additional U.S. attorneys?</p> <p>19 A. Yes.</p> <p>20 Q. And then I've got someone from the U.S. Army</p> <p>21 Corps of Engineers, Houston Office?</p> <p>22 A. Yes.</p> <p>23 Q. And then I've got a Chicago professor. Is</p> <p>24 that right?</p> <p>25 A. That's correct.</p>
<p>51</p> <p>1 Q. After you checked into the hotel?</p> <p>2 A. Correct.</p> <p>3 Q. Where did you go to meet Brian Lynk?</p> <p>4 A. In the hotel lobby.</p> <p>5 Q. Approximately how long was that meeting?</p> <p>6 A. An hour.</p> <p>7 Q. Other than the one hour conversation you had</p> <p>8 with Brian Lynk in the lobby of the hotel on day one</p> <p>9 of your site visit, did you discuss this case with</p> <p>10 anyone else?</p> <p>11 A. No.</p> <p>12 Q. So let's go to day two of your site visit.</p> <p>13 A. Uh-huh.</p> <p>14 Q. What did you do that morning?</p> <p>15 A. We had an early start. There were a number</p> <p>16 of people going on the visit all staying in the same</p> <p>17 hotel. We met in the lobby before sunrise, and -- I</p> <p>18 was going to say boarded, but I got into several</p> <p>19 vehicles and then drove from San Antonio to Eagle</p> <p>20 Pass.</p> <p>21 Q. How many people were there that were with</p> <p>22 you at this point?</p> <p>23 A. Total, approximately eight.</p> <p>24 Q. Eight people? Who were the eight people?</p> <p>25 A. I don't recall all of their names. I know</p>	<p>53</p> <p>1 Q. Six folks?</p> <p>2 A. Plus myself.</p> <p>3 Q. Plus yourself. So seven folks?</p> <p>4 A. Yes. Approximately, yes.</p> <p>5 MR. LYNK: I'll just note pronunciation</p> <p>6 is Kimere.</p> <p>7 MR. STONE: Thank you. I'm sorry.</p> <p>8 Apologies, Kimere. You're probably listening.</p> <p>9 THE WITNESS: Sorry, Kimere.</p> <p>10 MR. STONE: I'm sorry, Kimere.</p> <p>11 THE WITNESS: Sorry.</p> <p>12 Q. (BY MR. STONE) Who was the gentleman from</p> <p>13 the Houston office of the U.S. Army Corps of</p> <p>14 Engineers?</p> <p>15 A. His first name is Christopher, I believe,</p> <p>16 and I think he was a chief of operations, I believe.</p> <p>17 Q. Did he accompany you for the entirety of the</p> <p>18 second day of your site visit?</p> <p>19 A. Well, we were split up into two cars, and</p> <p>20 then on multiple boats on the site visit, so we</p> <p>21 crossed paths with each other, but not the entire</p> <p>22 time.</p> <p>23 Q. I see. Did you discuss the case with</p> <p>24 Christopher from the Houston U.S. Army Corps office?</p> <p>25 MR. LYNK: I'm going to object. I</p>

<p style="text-align: right;">54</p> <p>1 instruct not to answer that one, given the protection 2 of work product with consulting experts under the 3 federal rules. 4 You can ask a different question that -- 5 MR. STONE: No, I can't. I didn't ask 6 him about the contents of the question. I asked him 7 if he spoke with him. Your instruction was for him 8 to not answer whether he spoke to him, not the 9 contents. 10 Q. (BY MR. STONE) So are you refusing to 11 answer my question of whether or not you discussed 12 the case with Christopher? 13 A. I am going to do what Mr. Lynk asks me to 14 do, yes. 15 Q. On the second day of your site visit, 16 approximately how much of the day did you spend in 17 the presence of Christopher from the U.S. Army Corps' 18 Houston office? 19 A. He was in the car when we drove down to 20 Eagle Pass, and so that's two hours or so. And then 21 we sat in the same conference room when we were 22 briefed by CBP before going on the boats. And then I 23 don't recall if we were on any of the same boats, but 24 we were not able to have conversations anyway, so I 25 don't know whether -- and then afterwards, before we</p>	<p style="text-align: right;">56</p> <p>1 person in charge -- who gave us just an overview 2 of -- and gave us an opportunity to ask some 3 questions. And as far as I know, that was it. 4 Q. How many people were present in addition -- 5 let me strike that. 6 How many people were -- let me be 7 specific. So -- let me see if I can make it easier. 8 The only other people that were present 9 apart from your party that arrived were CBP 10 personnel, correct? 11 A. As far as I know. I don't know who all was 12 in the room. 13 Q. So you're not sure if they were CBP? 14 A. They were all people in uniform. 15 Q. Were they wearing CBP uniforms? 16 A. Not certain. 17 Q. What does a CBP uniform look like? 18 A. Well, I saw several, depending upon what 19 their roles were. So it looks like a military 20 uniform of sorts or law enforcement. 21 Q. How many peop -- so everybody in the room 22 other than the party that you arrived with was in 23 uniform during this briefing, correct? 24 A. I'm not certain. 25 Q. Okay. How many people, other than the party</p>
<p style="text-align: right;">55</p> <p>1 got on the road to head back, we had lunch together, 2 and I don't recall if he was in the vehicle on the 3 trip back. 4 Q. How long was the drive from San Antonio to 5 Eagle Pass? 6 A. About two and a half hours. 7 Q. Was Christopher in the car with you during 8 that ride? 9 A. On the trip down, yes. 10 Q. What happened once you arrived in Eagle 11 Pass? 12 A. We went to a CBP office and was briefed by 13 one of the commanders there, chief people there. And 14 then we went to -- by the detention center, if that's 15 what you call it, the processing center, soft-sided 16 facility I think is what they called it, but did not 17 go in, and then we were taken to the boats. 18 Q. So let's walk through each of those. So 19 first you attended a briefing. Who was present 20 during the briefing? 21 A. All of the members of our party. 22 Q. Was anyone else present during the briefing? 23 A. Yes, a number of people from the CBP and 24 then the person who appeared to be the person in 25 charge -- I believe he was introduced to be the</p>	<p style="text-align: right;">57</p> <p>1 that you arrived with, were present during the 2 briefing? 3 A. Eight. 4 Q. Eight additional people? 5 A. I would estimate eight. 6 Q. And you mentioned that the briefing was 7 given by someone who was identified as a CBP 8 commander. Is that correct? 9 A. I'm not sure if that's the proper term, but 10 one of the officers in charge. 11 Q. What was his name? 12 A. I saw -- he -- I think it's George Cavozaas, 13 or however you say his last name. 14 Q. George Cavarsoas, Cavozaas. 15 A. Cavaloz or Cavalozo. 16 Q. Something like that? 17 A. Something like that. 18 Q. Do you know what his -- do you know what 19 kind of rank he had? 20 A. No. 21 Q. How long was the presentation? 22 A. 10, 15 minutes. 23 Q. Did you rely on any of the information that 24 you received during the presentation in forming your 25 expert opinions in this case?</p>

<p>58</p> <p>1 A. No.</p> <p>2 Q. What was the presentation about?</p> <p>3 A. A little bit of introduction to the Eagle</p> <p>4 Pass section of the Rio Grande, what we would be</p> <p>5 doing that day. And there were some questions asked</p> <p>6 about how many immigrants or people trying to cross</p> <p>7 the river, what number of people there were, and</p> <p>8 that's pretty much it.</p> <p>9 Q. Did you ask any questions during the</p> <p>10 meeting?</p> <p>11 A. No.</p> <p>12 Q. At the conclusion of the 10- to 15-minute</p> <p>13 meeting with George Cavazos, you mentioned that next</p> <p>14 the group went to a detention center, right?</p> <p>15 A. Yes.</p> <p>16 Q. Where was that detention center in relation</p> <p>17 to the briefing room or the -- strike that.</p> <p>18 Where was the detention center in</p> <p>19 relation to the room where you received the briefing?</p> <p>20 A. It was in the same compound or the same</p> <p>21 area.</p> <p>22 Q. Just generally describe what the detention</p> <p>23 center looked like.</p> <p>24 MR. LYNK: I'm going to object. This is</p> <p>25 beyond the scope of his opinions, and any</p>	<p>60</p> <p>1 Q. (BY MR. STONE) Are you refusing to answer</p> <p>2 my questions about what the appearance of the</p> <p>3 detention center was when you visited it during your</p> <p>4 site visit in this case?</p> <p>5 A. Yes, I am, as I was instructed.</p> <p>6 Q. Okay. How long were you at the detention</p> <p>7 center?</p> <p>8 MR. LYNK: I'm going to object and</p> <p>9 instruct him not to answer.</p> <p>10 MR. STONE: Let's take a break. I think</p> <p>11 we're going to need to call the judge.</p> <p>12 THE VIDEOGRAPHER: Off the record. Time</p> <p>13 is 10:32.</p> <p>14 (Recess 10:32 a.m. 11:01 a.m.)</p> <p>15 THE VIDEOGRAPHER: We're back on the</p> <p>16 record. The time is 11:01.</p> <p>17 MR. STONE: And just for the record, I</p> <p>18 want to recount what just happened. We did call</p> <p>19 Justice Howell's -- let me start again.</p> <p>20 While we took a break, we discussed with</p> <p>21 opposing counsel, Mr. Brian Lynk, how to proceed. We</p> <p>22 called Magistrate Howell, who this case is assigned</p> <p>23 to and who is the sitting duty judge right now. We</p> <p>24 called and left a message with his court deputy to</p> <p>25 give us a call back and notify them that we've had an</p>
<p>59</p> <p>1 conversations he's having with U.S. personnel</p> <p>2 accompanied by counsel that are not related to his</p> <p>3 opinions would be work product.</p> <p>4 MR. STONE: Okay.</p> <p>5 THE REPORTER: I'm sorry, would be?</p> <p>6 MR. LYNK: Work product.</p> <p>7 MR. STONE: I don't know why you're</p> <p>8 speaking right now. I didn't ask him about a</p> <p>9 conversation. I asked him to describe what the</p> <p>10 detention center looked like. So while you're just</p> <p>11 speaking about what the conversations are -- or.</p> <p>12 MR. LYNK: I'm speaking because it's</p> <p>13 privilege objection, and you are allowed --</p> <p>14 MR. STONE: Are you instructing --</p> <p>15 MR. LYNK: -- to make speaking</p> <p>16 objections.</p> <p>17 MR. STONE: Are you --</p> <p>18 MR. LYNK: Yes, I'm instructing --</p> <p>19 MR. STONE: Are you instructing him not</p> <p>20 to answer about what the appearance of the detention</p> <p>21 center was?</p> <p>22 MR. LYNK: Yes, I'm instructing him not</p> <p>23 to answer about that. There is nothing --</p> <p>24 MR. STONE: Are you --</p> <p>25 MR. LYNK: -- about that.</p>	<p>61</p> <p>1 issue come up and that we would like the judge to</p> <p>2 rule.</p> <p>3 So that's what's happened during the</p> <p>4 break before we came back on the record. Go ahead if</p> <p>5 you want to make your privilege.</p> <p>6 MR. LYNK: Yes. I will just note that</p> <p>7 summary of what occurred is accurate. I am objecting</p> <p>8 to a question about how long the witness was at the</p> <p>9 detention center of CBP on the grounds of law</p> <p>10 enforcement privilege and instructing him not to</p> <p>11 answer on that basis.</p> <p>12 MR. STONE: And just for the record, is</p> <p>13 that also the reason why you are not answering the</p> <p>14 question that was asked earlier?</p> <p>15 THE WITNESS: That is correct.</p> <p>16 Q. (BY MR. STONE) Earlier we talked about</p> <p>17 Christopher from the Houston U.S. Army Corps of</p> <p>18 Engineers office, and you were instructed not to</p> <p>19 answer questions about your conversations with him.</p> <p>20 Do you recall that?</p> <p>21 A. I do.</p> <p>22 Q. Did you rely on any conversations that you</p> <p>23 had with Christopher from the Houston office of the</p> <p>24 U.S. Army Corps of Engineers in forming the bases for</p> <p>25 your opinions in this case?</p>

<p style="text-align: right;">62</p> <p>1 A. No, I did not.</p> <p>2 Q. What happened after you left the detention</p> <p>3 center?</p> <p>4 A. We were transported to the riverside to a</p> <p>5 boat ramp to board the vessels.</p> <p>6 Q. And approximately what time was that?</p> <p>7 A. I have no idea.</p> <p>8 Q. Was it before lunchtime?</p> <p>9 A. Yes. It was in the morning.</p> <p>10 Q. It was in the morning. Where was the dock</p> <p>11 that you were transported to?</p> <p>12 A. We were not transported to a dock. It was a</p> <p>13 boat ramp, and there are several in that area. I</p> <p>14 believe it was the Gonzalez ramp.</p> <p>15 Q. About how long did it take to transport you</p> <p>16 from the detention center to the Gonzalez ramp?</p> <p>17 A. 10 or 15 minutes.</p> <p>18 Q. During that 10- or 15-minute transfer to the</p> <p>19 Gonzalez ramp, did you discuss this case with anyone</p> <p>20 at CBP?</p> <p>21 A. No.</p> <p>22 Q. What happened once you arrived at the</p> <p>23 Gonzalez ramp?</p> <p>24 A. We were given a safety briefing, put on</p> <p>25 PFDs, personal flotation devices, and hearing</p>	<p style="text-align: right;">64</p> <p>1 Q. Was it Brian Lynk?</p> <p>2 A. I don't recall.</p> <p>3 Q. So on the airboat at this point, it's the</p> <p>4 boat operator and one additional personnel from CBP</p> <p>5 assisting him, correct?</p> <p>6 A. That is correct.</p> <p>7 Q. And then three people from your party of</p> <p>8 seven?</p> <p>9 A. Well, there would have been three on two of</p> <p>10 the boats and two on one of the boats. We had three</p> <p>11 on the boat I was on.</p> <p>12 Q. Who was the boat operator?</p> <p>13 A. I do not know.</p> <p>14 Q. Who was this CBP person assisting the boat</p> <p>15 operator?</p> <p>16 A. I don't know.</p> <p>17 Q. Did you discuss the case with the CBP boat</p> <p>18 operator?</p> <p>19 A. No.</p> <p>20 Q. Did you discuss this case with the CBP</p> <p>21 assistant to the boat operator?</p> <p>22 A. No.</p> <p>23 Q. Was the noise generated by the airboat such</p> <p>24 that you couldn't have conversations on the airboat</p> <p>25 while traveling?</p>
<p style="text-align: right;">63</p> <p>1 protection and boarded the boats.</p> <p>2 Q. How many boats were there?</p> <p>3 A. Two or three.</p> <p>4 Q. What type of boats were they?</p> <p>5 A. They were all airboats.</p> <p>6 Q. How many people were there, total, on the</p> <p>7 trip at this point?</p> <p>8 A. I believe there were eight including myself</p> <p>9 approximately.</p> <p>10 Q. So there were eight people, total, present</p> <p>11 spread out among three boats?</p> <p>12 A. To the best of my knowledge.</p> <p>13 Q. Did you board a boat at that point?</p> <p>14 A. I did.</p> <p>15 Q. How many people were in the boat that you</p> <p>16 boarded?</p> <p>17 A. Three, plus the operators.</p> <p>18 Q. How many operators were there?</p> <p>19 A. There was the person actually operating the</p> <p>20 boat and then his mate or deckhand. So there were</p> <p>21 two personnel, CBP personnel.</p> <p>22 Q. And who else from the party that you arrived</p> <p>23 in Eagle Pass with was on the boat with you during</p> <p>24 this trip?</p> <p>25 A. I don't recall.</p>	<p style="text-align: right;">65</p> <p>1 A. Yes, but we were wearing headsets that were</p> <p>2 connected wirelessly, and conversation could take</p> <p>3 place; though, on the boat I was on, none that I</p> <p>4 recall other than possibly some instructions or</p> <p>5 comments by the operator.</p> <p>6 Q. Okay. So the operator was connected to your</p> <p>7 headset and could hear what conversation was taking</p> <p>8 place?</p> <p>9 A. If we had some, he would have been able to</p> <p>10 hear it, yes.</p> <p>11 Q. Was the boat operator a lawyer?</p> <p>12 A. No.</p> <p>13 Q. What did you guys discuss while you were on</p> <p>14 that -- while you were on the airboat?</p> <p>15 A. We actually did not have discussion.</p> <p>16 Q. How long was the airboat ride?</p> <p>17 A. In total, a little over an hour.</p> <p>18 Q. And where did you go during the airboat</p> <p>19 ride?</p> <p>20 A. We went up to the marine floating barrier</p> <p>21 area.</p> <p>22 Q. Did you actually see the floating -- marine</p> <p>23 floating barrier?</p> <p>24 A. I did.</p> <p>25 Q. For the purposes of this case it's going to</p>

<p>66</p> <p>1 be easier if, when I say, "the marine flo" -- when I 2 say "buoys," I'm referring to the marine floating 3 barrier. Do you understand? 4 A. I have a bit of difficulty with that because 5 they're not buoys; they're floats. If you want to 6 refer to it as "barrier" or something, but I have a 7 hard time agreeing to characterizing the barrier as 8 buoys. 9 Q. I understand that you have a problem with me 10 characterizing it as buoys, but I'm asking if you 11 understand that that's what I mean when I use the 12 term "buoys"? 13 A. Yes, if you insist. 14 Q. Okay. We'll get into the details about why 15 you think that they're not a buoy -- 16 A. Okay. 17 Q. -- shortly. But for the purposes of my 18 questions, I'm going to refer to them as "the buoys." 19 A. Okay. 20 Q. Approximately how long did it take to arrive 21 at the site where the buoys were located? 22 A. Ten minutes. 23 Q. How long were you at the site where the 24 buoys were located? 25 A. 30 minutes.</p>	<p>68</p> <p>1 Did you actually pull up and -- strike 2 that. 3 Did you touch the buoys? 4 A. I did not touch the buoys. 5 Q. Did you get close enough to touch the buoys? 6 A. No, I did not get close enough to touch the 7 buoys. 8 Q. Did the boat that potentially touched the 9 buoys -- strike that. 10 But it's your testimony today that you 11 observed one of the other airboats touch the buoys? 12 A. No. 13 Q. They touched the concrete blocks the buoys 14 are sitting on. Is that more accurate? 15 A. That's correct. 16 Q. Did you get close enough to touch the 17 concrete barriers that the buoys are sitting on 18 during this site visit? 19 A. No. 20 Q. Of the three boats, how many of them got 21 close enough to touch the concrete where the buoys 22 are -- that the buoys sit on top of? 23 A. I only saw the one. 24 Q. How many people were on the boat that made 25 contact with the concrete that the buoys sit on?</p>
<p>67</p> <p>1 Q. Did you travel by the airboat past the buoys 2 upstream? 3 A. We did. 4 Q. Did you travel past the buoys on the airboat 5 going downstream? 6 A. Yes. 7 Q. Did you circle around the buoys in the 8 airboat? 9 A. We did. 10 Q. So you went up, down, and around the 11 buoys -- 12 A. That is -- 13 Q. -- during this site visit? 14 A. That is correct. 15 Q. Was there any damage to the airboat while 16 you were going up, down, and around the buoys? 17 A. There was no damage to the boat I was on. 18 Q. Oh, was there damage to any of the other 19 boats that were there? 20 A. It appeared that one of the boats that was 21 much closer to the barrier had touched or grounded on 22 one of the concrete barriers to some degree, but I 23 don't know if there was damage or not. 24 Q. I think I understand. I don't think I 25 appreciated it before.</p>	<p>69</p> <p>1 A. The two operators and two or three of the 2 passengers. 3 Q. And approximately how deep was the water at 4 that time? 5 A. In the vicinity of the barrier, three feet. 6 Q. And there was no discussion at all during 7 this point while you spent 30 minutes going up, down, 8 and around the buoys, right? 9 A. There was some discussion by the operator of 10 where we were and landmarks and what certain bridges 11 we were passing under were named, and I believe that 12 was the extent of it. 13 Q. What happened after the 30 minutes or so 14 that you spent going up, down, and around the buoys? 15 A. We went back toward -- in the direction of 16 the boat ramp where we had boarded. We got to one of 17 the bridges, and we actually tied up to the bridge, 18 just put a line out and just sat there for about ten 19 minutes and just relaxed and looked around and took 20 all in, then got back underway and proceeded back to 21 the boat ramp. 22 Q. How what bridge was that? 23 A. I don't know. 24 Q. Did you discuss the case at all during that 25 ten minutes or so that you were tied up at the</p>

<p style="text-align: right;">70</p> <p>1 bridge --</p> <p>2 A. No.</p> <p>3 Q. -- relaxing? What happened after you left</p> <p>4 the area under the bridge where you were relaxing?</p> <p>5 A. We returned to the boat ramp.</p> <p>6 Q. What happened after you returned to the boat</p> <p>7 ramp?</p> <p>8 A. We disembarked, took off the equipment that</p> <p>9 we had put on, and went back to the vehicles.</p> <p>10 Q. And what happened after you went back to the</p> <p>11 vehicles?</p> <p>12 A. We went to a restaurant for lunch.</p> <p>13 Q. And when you say, "we," do you mean the</p> <p>14 original party that you left San Antonio with?</p> <p>15 A. That is correct.</p> <p>16 Q. Was there anyone else that attended the</p> <p>17 lunch with you other than the party that you</p> <p>18 originally left San Antonio with?</p> <p>19 A. I don't know.</p> <p>20 Q. What happened after you guys -- after you</p> <p>21 finished lunch?</p> <p>22 A. We got back in the vehicles and went back to</p> <p>23 San Antonio.</p> <p>24 Q. Approximately what time was that?</p> <p>25 A. 1, 1:30 in the afternoon.</p>	<p style="text-align: right;">72</p> <p>1 when you were taking the photographs?</p> <p>2 A. The party that I was with, plus the driver</p> <p>3 of the vehicle, and -- the name I'm having problems</p> <p>4 with again Cavalloza or -- he was there, and I</p> <p>5 remember another young guy from CBP who was in the</p> <p>6 vicinity.</p> <p>7 Q. Was the driver of the vehicle a lawyer?</p> <p>8 A. Not that I'm aware of.</p> <p>9 Q. Is the Cavalloza individual a lawyer?</p> <p>10 A. No.</p> <p>11 Q. Okay. He was present when you were taking</p> <p>12 the pictures from that vantage point over --</p> <p>13 looking -- overlooking the buoys, right?</p> <p>14 A. That is correct.</p> <p>15 Q. What did you guys talk about?</p> <p>16 A. I --</p> <p>17 Q. Strike that. Let me start again.</p> <p>18 You discuss you disc -- did you discuss</p> <p>19 the case at that point?</p> <p>20 A. I did not discuss the case per se. What I</p> <p>21 did do was ask questions as to how the barrier</p> <p>22 affected the operations of his men.</p> <p>23 Q. Okay. And you directed those questions to</p> <p>24 who?</p> <p>25 A. To Cavalloza.</p>
<p style="text-align: right;">71</p> <p>1 Q. So, in total, at the river around the --</p> <p>2 strike that.</p> <p>3 A. May I readdress that question?</p> <p>4 Q. In a -- I've got a call coming in, so I</p> <p>5 think this is the court. Let's take the -- I hope</p> <p>6 it's the court?</p> <p>7 THE REPORTER: Off the record?</p> <p>8 MR. STONE: Off the record.</p> <p>9 THE VIDEOGRAPHER: Off the record. The</p> <p>10 time is 11:15.</p> <p>11 (Discussion off the record.)</p> <p>12 THE VIDEOGRAPHER: Back on the record.</p> <p>13 The time is 11:20.</p> <p>14 Q. (BY MR. STONE) A moment ago you said that</p> <p>15 you wanted to change the answer that you had just</p> <p>16 given. Do you recall that?</p> <p>17 A. I did. I had further recollection.</p> <p>18 After we left the boat ramp, we went by</p> <p>19 vehicle to a place on the bank of the river that</p> <p>20 overlooked the barrier, and got out of the vehicles</p> <p>21 and had an opportunity to look at the barrier from</p> <p>22 that perspective and take photographs and so forth.</p> <p>23 Q. Did you take photographs at that point?</p> <p>24 A. I did.</p> <p>25 Q. Who all was present with you at that time</p>	<p style="text-align: right;">73</p> <p>1 Q. Okay. Generally, how long did this -- I'm</p> <p>2 going to call it a meeting. This -- well, strike</p> <p>3 that.</p> <p>4 Where exactly were you located?</p> <p>5 A. We were on the bank at the -- right up to</p> <p>6 the fence that -- with all the sea wire and razor</p> <p>7 wire that overlooked the barrier on the U.S. side.</p> <p>8 Q. And how long were you there approximately?</p> <p>9 A. Ten minutes.</p> <p>10 Q. So during this sort of ten-minute period,</p> <p>11 what questions did you ask to Cavalloza?</p> <p>12 A. I asked if the barrier had an impact on the</p> <p>13 operation of his officers.</p> <p>14 Q. And how did he respond?</p> <p>15 A. That it did.</p> <p>16 Q. Is that all he said?</p> <p>17 A. No.</p> <p>18 Q. Okay. What else did he say?</p> <p>19 A. He said that it created a hazard to</p> <p>20 navigation, that after the barrier was moved from</p> <p>21 closer to the center line to closer to the U.S. bank,</p> <p>22 that the maneuvering space --</p> <p>23 MR. STONE: You're going to have to</p> <p>24 stop. I'm sorry we're going to have to take it back</p> <p>25 up.</p>

<p>74</p> <p>1 THE VIDEOGRAPHER: Off the record time 2 is 11:23. 3 (Discussion off the record.) 4 THE VIDEOGRAPHER: We're back on the 5 record. Time is 11:24. 6 MR. STONE: And just for the record, we 7 just spoke with Magistrate Howell's deputy, and we're 8 going to be speaking with the judge at 12:30 or 12:45 9 to resolve this privilege issue. 10 Q. (BY MR. STONE) So you were cut off mid 11 answer. I want to give you a chance to go ahead and 12 finish your answer. 13 THE WITNESS: Could the court reporter 14 repeat what I had said, please. 15 THE REPORTER: Okay. The question was, 16 "What else did he say?" 17 Answer: "He said that it created a 18 hazard to navigation, that after the barrier was 19 moved from closer to the center line to closer to the 20 U.S. bank, that the maneuvering space" -- then 21 Mr. Stone said, "You're going to have to stop." 22 THE WITNESS: Okay. So if I can just 23 continue there that the maneuvering space was greatly 24 reduced, that only -- while one of the fanboats could 25 operate at a time on the U.S. side of the barrier,</p>	<p>76</p> <p>1 Q. Other than the party that you left San 2 Antonio with on that first -- strike that. 3 What happened when you got back to 4 San Antonio? 5 A. We were dropped off at the hotel. 6 Q. What did you do after you were dropped off 7 at the hotel? 8 A. We -- I went back to my hotel room. 9 Q. Did you have any subsequent meetings after 10 you were dropped off at your hotel room on day two of 11 your site visit about this case? 12 A. I think we had niceties between the 13 participants, just saying it was nice meeting them 14 and see them again. And I recall asking Mr. Lynk 15 if -- 16 Q. Let me stop you there. So I don't want get 17 into the substance of your actual conversations with 18 Mr. Lynk. 19 A. Okay. 20 Q. Okay. I'm just asking about existence of 21 meetings. So I'll ask about time, manner, location, 22 but not contents. 23 A. Okay. 24 Q. All right. Did you have any -- so day two 25 of your site visit back in February. Other than the</p>
<p>75</p> <p>1 and that if there was a drowning victim on the other 2 side of the barrier from where a boat was located, 3 that they would have to go around the bar -- into the 4 barrier to get to them rather than going straight to 5 them, which it would take a little bit more time. 6 Q. Did he say anything else? 7 A. Not that I remember specifically. 8 Q. Did you rely on the -- that conversation in 9 forming your expert opinions in this case? 10 A. I relied on a number of things in forming my 11 opinions. It's all covered under the bases of my 12 opinions within my report, but I did certainly rely 13 on some of what was said by the -- by Mr. Cavalloza 14 and the other CBP officers as to whether or not they 15 viewed it as being a hazard to navigation. 16 Q. Well -- 17 MR. STONE: Objection. Nonresponsive. 18 Q. I'm going to ask it again. I'm only asking 19 about the conversation you just described with 20 Cavalloza. Did you rely on that in forming your 21 opinions in this case? 22 A. No. 23 Q. Okay. What happened after you left the bank 24 side location after ten minutes? 25 A. That is when we went to lunch.</p>	<p>77</p> <p>1 conversations that you've described so far in your 2 testimony -- 3 A. Uh-huh. 4 THE WITNESS: Sorry. 5 Q. -- was there anyone else that you talked to 6 that you haven't identified? 7 A. Not that I recall. 8 Q. Were there any conversations that you had 9 that day with anyone from CBP that you relied on in 10 forming your expert opinions in this case? 11 A. Some of the conversation that I had with 12 Mr. Cavalloza bolstered my opinions, but they did not 13 help me form my opinions. 14 Q. When you say, "some of the conversations," 15 are you specifically referring to the conversation 16 that you had -- that ten-minute conversation bank 17 side with Mr. Cavalloza? 18 A. Yes, and I never said it was a ten-minute 19 conversation. I said we were there for about ten 20 minutes. The conversation was about five minutes 21 long. 22 Q. So you had already formed your opinions by 23 the time you arrived on day two of the site visit in 24 this case. Is that fair? 25 MR. LYNK: Object to form.</p>

<p style="text-align: right;">78</p> <p>1 A. I had formed certain opinions based on the 2 research I had done and the evaluation of some of the 3 information that I had received. So I already had my 4 basic opinions formed at that point. 5 Q. (BY MR. STONE) What opinion did you -- or 6 had you already formed that Mr. Cavalloza's 7 conversation with you merely bolstered? 8 A. That the barrier is -- creates a hazard to 9 navigation and thereby it reduces navigable capacity 10 of the river. 11 Q. So prior to the site visit, what information 12 did you rely on to form that opinion? Strike that. 13 Strike that. 14 When did you first form that opinion? 15 A. Shortly after I started to review case 16 information and learn some of the specifics of the 17 barriers, such as its length and width and location 18 in the river. 19 Q. So this is back in September of 2023? 20 MR. LYNK: Object to form. 21 A. It would have been -- it would have been 22 late in 2023; not necessarily in September. But 23 after I was first contacted by Mr. Lynk, I began 24 doing research on the barrier and -- just to decide 25 whether and -- one thing, whether I was a good fit</p>	<p style="text-align: right;">80</p> <p>1 to navigation? 2 A. Well, I never really relied upon the news 3 stories that -- to form my opinions. What I did was 4 use the -- primarily the visuals that were available 5 through them about the location and what the 6 structure looked like and so forth. But there would 7 have been three or four articles. 8 Q. Can you turn to page -- Timmel Exhibit 1, 9 that's your expert report. Turn to page 34. 10 A. Okay. 11 Q. Okay. I want you to go through this list 12 and tell me which of these documents you relied on in 13 late 2023 when you formed the opinion that the buoys 14 were a hazard to navigation. 15 A. Well, they're not very descriptive in 16 nature, but I reviewed the Shelby declaration and -- 17 Q. Okay. Hold on. Let me -- 18 A. Shelnutt, I'm sorry. 19 Q. Shelnutt declaration. And that's on page 35 20 of Timmel Exhibit 1? 21 A. It's on 34 on my copy. 22 Q. Oh, it's on 34? Oh, I see it. Okay. 23 So you -- page 34 of Timmel Exhibit 1 24 you reviewed the Shelnutt declaration in the fall of 25 2023 and relied on that in forming your opinion that</p>
<p style="text-align: right;">79</p> <p>1 for the case or not. 2 And after seeing that I did and seeing 3 what I did, I -- it became apparent to me rather 4 early that it was certainly a hazard to navigation 5 and would reduce navigable capacity. 6 Q. (BY MR. STONE) So when did you first start 7 doing -- you said late 2023. Strike that. Let me 8 start again. 9 What research did you do in late 2023 10 that led you to conclude that the buoys were a hazard 11 to navigability? 12 A. The research I did was things that were 13 covered that you had resources -- that you had access 14 to on the internet: Different stories that had been 15 written about it, photographs that had been taken of 16 it that were published. 17 There was one story I read about a 18 gentleman who rented kayaks that could no longer do 19 that, and so I got information from that. 20 Q. Did you actually speak to anybody when you 21 were forming these opinions back in late 2023? 22 A. No. 23 Q. Approximately how many news articles did you 24 read in late 2023 about the case that you relied on 25 in forming the opinion that the buoys were a hazard</p>	<p style="text-align: right;">81</p> <p>1 the buoys were an obstruction to navigation, right? 2 MR. LYNK: Object to form. 3 A. I would need to see that document in order 4 to be able to answer that. 5 Q. (BY MR. STONE) So you're not sure if you 6 relied on that document in late 2023 in forming your 7 opinion? 8 A. That is correct. 9 Q. Okay. Look at the rest of the list and tell 10 me if there are any documents on here that you re -- 11 what documents on this list you relied on in the fall 12 of 2023 in forming your expert opinion -- forming the 13 opinion that the buoys were an obstruction to 14 navigation. 15 A. If you go to page 35 -- 16 Q. Uh-huh. 17 A. -- number 4, part A, Maps and Aerial photos. 18 Q. Okay. It says, "Received by email 19 January 26 of 2024," right? 20 A. That's correct. 21 Q. So you received those in the spring of 2024, 22 right? 23 MR. LYNK: Object to form. 24 A. Well, in winter of 2024. 25 Q. (BY MR. STONE) Well, my question is, again,</p>

<p>82</p> <p>1 what documents did you rely on in late 2023 when you 2 formed the opinion that the buoys were an obstruction 3 to navigation from this list of documents in your 4 expert report? 5 A. Well, perhaps I -- I had an initial -- 6 initial opinion that it was a hazard to navigation 7 primarily by visual inspection and photographs that 8 showed that I was able to find, and -- 9 MR. STONE: Objection. Nonresponsive. 10 Q. (BY MR. STONE) I just want you to look at 11 this list here -- 12 A. Okay. 13 Q. -- okay, in Timmel Exhibit 1, and just tell 14 me if it lists the documents that you were looking at 15 in the fall of 2023 when you formed the opinion that 16 the buoys were an obstruction to navigation. 17 MR. LYNK: Object to form. 18 A. I don't see any -- I don't see the articles 19 listed. 20 Q. (BY MR. STONE) Approximately how many 21 articles -- well, before we move on, just for the 22 sake of thoroughness, can you look at Timmel Exhibit 23 2, which is the supplemental next to you -- 24 A. Yes. 25 Q. -- and see if maybe they're listed in there?</p>	<p>84</p> <p>1 Q. So you read -- you saw three or four 2 articles about the buoys and saw some images of the 3 buoys -- 4 A. Yes. 5 Q. -- at that time -- 6 A. Yes. 7 Q. -- correct? 8 A. Uh-huh. 9 Q. And then based on that, you concluded that 10 the buoys were an obstruction to navigation, right? 11 A. No. During that period of time I had 12 originally spoken with Mr. Lynk, and whenever I take 13 a case -- 14 Q. Don't tell me about the contents of your 15 conversations with Mr. Lynk -- 16 A. Okay. 17 Q. -- okay? 18 A. Okay. Whenever I take a case, I -- before I 19 accept the case, I like to have an opportunity to 20 review whatever information is available to me to 21 decide whether it's within my area of expertise or 22 not. 23 So I had seen news stories about the 24 barrier prior to Mr. Lynk contacting me, and then 25 after he spoke with me -- after he sent me the email</p>
<p>83</p> <p>1 Can you look at Timmel Exhibit 2 and tell us -- do 2 you see in that supplemental whether it contains the 3 documents that you reviewed in 2023 in forming the 4 opinion that the buoys were an obstruction to 5 navigation? 6 A. No, I do not. 7 Q. Approximately how many documents did you 8 review in the fall of 2023 before forming the opinion 9 that the buoys were an obstruction to navigation? 10 A. As I recall, three or four news stories or 11 articles. 12 Q. Do you remember -- strike that. 13 What can you recall about those -- 14 strike that. 15 Do you still have copies of those 16 articles? 17 A. I never had copies of them. I just reviewed 18 them online. 19 Q. Do you remember where the news articles were 20 published? 21 A. No, I do not. 22 Q. Were they newspaper articles? 23 A. I think they were -- some of them were 24 newspaper articles and some of them were television 25 news station articles or stories.</p>	<p>85</p> <p>1 and we first spoke, I started doing research to see 2 whether or not it was within my area of expertise. 3 So I did not form any final opinions during that 4 period. My opinions were in formation during that 5 time. 6 Q. So you formed an opinion, but it wasn't a 7 final opinion? 8 MR. LYNK: Object to form. 9 A. It's from the very first time I saw that and 10 after -- with the understanding that the question was 11 did I think the barrier created -- diminished the 12 navigability capacity of the river, that started me 13 thinking and started me thinking as to what would do 14 that. And then I looked at different stories and, 15 based on primarily photographs that I looked at, that 16 it sure looked like a hazard to navigation and that I 17 thought I could be of -- that it was in my 18 wheelhouse, so to speak, of expertise. 19 MR. STONE: Let's go off the record for 20 a moment. 21 THE VIDEOGRAPHER: Off the record the 22 time is 11:42. 23 (Lunch recess 11:43 a.m. to 12:32.) 24 THE VIDEOGRAPHER: We're back on the 25 record. The time is 12:32.</p>

<p>86</p> <p>1 Q. (BY MR. STONE) I want to go back and ask 2 you about what we've marked as Timmel Exhibit 7. 3 Do you see the document on the screen 4 right now? 5 A. I'm sorry? 6 Q. Do you see the document? 7 A. I do. 8 Q. Okay. This is the answers that you received 9 to your questions that were emailed on -- well, 10 strike that. 11 These are the answers that you received 12 to some of the questions that you had in the case, 13 right? 14 A. That's correct. 15 Q. And earlier you testified that the 16 highlighted portion is what was filled in by some 17 unknown person, but you wrote the actual 18 non-highlighted question part, right? 19 A. That is correct. 20 Q. I want to go through each of these, and I 21 have some follow-up questions about them. 22 A. Okay. 23 Q. Could you read the first question? 24 A. Okay. "Has the floating marine barrier 25 created any hazards to navigation for: a. Federal</p>	<p>88</p> <p>1 A. Yes. 2 Q. What is the answer that you received back 3 from an unknown person in response to "a" of Timmel 4 Exhibit 7? 5 A. It says, "Yes, the concrete anchors to keep 6 the buoys in place create navigational hazards 7 (Dangers of striking anchors)" -- wait a second. I'm 8 having a hard time -- "anchors) and the restricted 9 navigational hazards of traversing the area." 10 Q. Is that consistent with the opinion in this 11 case that you'd already formed in the fall of 2023? 12 MR. LYNK: Object to form. 13 A. I -- the opinions I formed in fall of 2023 14 were preliminary opinions just based upon the 15 information that I was able to find online. And 16 based on that information, I felt the barrier did 17 create a hazard to navigation and did reduce the 18 navigational capacity of the river. But I would 19 never have that opinion based strictly on what I saw 20 online. So I knew that I needed to see it in person 21 and review additional information and data and 22 evidence. 23 MR. STONE: Objection. Nonresponsive. 24 Q. (BY MR. STONE) My question to you was if 25 this, what we just read, was consistent with the</p>
<p>87</p> <p>1 agents? If yes, how?" 2 Q. So let me stop you there. It says, "a," 3 right? 4 A. Yes. 5 Q. Was there a "b" ever to this document? 6 A. I don't recall. 7 Q. Earlier you testified if there -- strike 8 that. 9 There was an amendment made to this 10 document on February 1st, correct? 11 A. Yes. 12 Q. Earlier you testified that if there were any 13 amendments, you would have made them, right? 14 A. Yes. 15 Q. Okay. And earlier I believe you testified 16 that if there were any amendments, you would have 17 added questions, right? 18 A. That's what the amendments would have been. 19 Q. You wouldn't have removed any questions, 20 though, right? 21 A. No. If the document came back and there 22 weren't some answers, perhaps I would have, but -- I 23 don't believe so, no. 24 Q. To the best of your recollection, there was 25 only ever an "a" on this document?</p>	<p>89</p> <p>1 opinion that you formed in the fall of 2023. 2 MR. LYNK: Object to form. 3 A. Consistent with my preliminary opinion that 4 I had in 2023. 5 Q. (BY MR. STONE) Did you -- all right. We 6 just returned from a lunch break, right? 7 A. Yes. 8 Q. Who did you eat lunch with? 9 A. With Mr. Lynk. 10 Q. How long was that lunch? 11 A. The actual lunch itself was 15, 20 minutes. 12 Q. But we actually took about a 45-minute 13 break, right? 14 A. That is correct. 15 Q. And is it your -- prior to taking a break 16 you testified that you formed an opinion about this 17 case in the fall of 2023 as it relates to whether or 18 not the buoys constituted an obstruction to 19 navigation on the Rio Grande River, right? 20 MR. LYNK: Object to form. 21 A. I formed a preliminary opinion to the extent 22 that I was comfortable in telling Mr. Lynk that I 23 thought I was appropriate to take on this case. 24 MR. STONE: Okay. Objection. 25 Nonresponsive.</p>

<p>90</p> <p>1 Q. (BY MR. STONE) I'm asking you if you 2 testified earlier -- and we can read it back -- that 3 you formed an opinion about whether or not the buoys 4 constituted a hazard to navigation in the fall of 5 2023. Do you recall that? 6 A. I do. 7 MR. LYNK: Object to form. 8 A. Sorry. 9 Q. (BY MR. STONE) And now, after you returned 10 from lunch, you're changing your testimony to tell us 11 that that opinion was only preliminary, aren't you? 12 MR. LYNK: Object to form. 13 A. I am not changing my testimony. I stated 14 that I had formed an opinion, and a preliminary 15 opinion is certainly an opinion. 16 Q. (BY MR. STONE) Did you use the word 17 "preliminary" opinion prior to going to lunch? 18 A. I did not. 19 Q. Okay. But you only -- this whole 20 "preliminary opinion" thing is only after you 21 returned from lunch with Brian Lynk, right? 22 MR. LYNK: Object to form. 23 A. I did not use that word prior to lunch, if 24 that's what you're asking. 25 Q. (BY MR. STONE) That is what I'm asking.</p>	<p>92</p> <p>1 case before you ever saw this document? 2 MR. LYNK: Object to form. 3 A. Yes. 4 Q. (BY MR. STONE) And that opinion that you 5 had before you ever saw this document is the opinion 6 we talked about before from the fall of 2023, right? 7 A. These questions were asked in 2024, so 8 somewhere between fall of 2023 and the time I asked 9 these questions, I had already formed an opinion. 10 Q. And what was the opinion that you had formed 11 in this case between the fall of 2023 and this 12 communication that you had with Brian Lynk? 13 A. That the barrier minimizes or reduces 14 navigable -- navigable capacity and the -- and 15 creates a hazard to navigation. 16 Q. That's the same opinion that you testified 17 earlier today you formed in the fall of 2023, right? 18 MR. LYNK: Object to form. 19 A. Yes. 20 Q. (BY MR. STONE) Has that opinion ever 21 changed between when you formed it in the fall of 22 2023 and today? 23 A. No. 24 Q. Can you read number 2 on Timmel Exhibit 7? 25 A. "Has the marine floating barrier impacted</p>
<p>91</p> <p>1 Thank you. 2 Did you -- you testified earlier that 3 you relied on this document in forming your opinions 4 in this case, right? 5 A. It influenced my opinions in this case; it 6 bolstered my opinions. It reinforced the opinions I 7 had -- was in the process of developing. 8 MR. STONE: Objection. Nonresponsive. 9 Q. (BY MR. STONE) I'm just asking if you 10 relied on this document when you were forming your 11 opinions about this case. 12 A. Yes. 13 Q. And what opinion in this case do you have 14 that you relied on the answer to -- strike that. I 15 asked about the whole documents, and I'm going to ask 16 about some specific questions as we go through. 17 For Timmel Exhibit -- Exhibit 7, in the 18 answer to question number 1, did you rely on this 19 answer in forming any opinions in this case? 20 A. It bolstered my opinions and reinforced my 21 opinions. 22 Q. When you say -- 23 A. Did I solely rely upon this? No. 24 Q. When you say that it bolstered your opinion, 25 is that because you already had an opinion about this</p>	<p>93</p> <p>1 the type of vessels utilizing the river?" And the 2 answer is no. 3 Q. Why would that be an important question to 4 ask in this case? 5 A. Because did it reduce navigable capacity. 6 Q. What do you mean when you say, "did it 7 reduce navigable capacity"? 8 A. If a certain type of vessel could proceed up 9 and down the river in a certain part of the river 10 prior to the installation of the barrier and then it 11 could not afterwards, then that would certainly be a 12 reduction in navigable capacity. 13 Q. I think you testified that the answer to 14 that was no, it hasn't had any impact on the type of 15 vessel utilizing the river, right? 16 A. Yes, but I was told yesterday and I 17 experienced yesterday that in fact it has. 18 Q. Well, we'll get to the -- we'll get to 19 yesterday. 20 So is it your testimony that you're no 21 longer relying on -- well, stop there. 22 Are you relying on the answer to number 23 2 in Timmel Exhibit 7 in your opinions in this case? 24 A. I considered it, but my opinion still stands 25 and did not waiver as a result of that answer.</p>

<p style="text-align: right;">94</p> <p>1 Q. It's fair to say that you've been unwavering 2 in your expert opinion in this case since the fall of 3 2023, right? 4 MR. LYNK: Object to form. 5 A. I have. 6 Q. (BY MR. STONE) Excellent. So, number 3. 7 Could you read number 3 for us from Timmel Exhibit 7? 8 A. "Has the marine floating barrier impacted 9 the number of vessels utilizing the river?" And the 10 answer is yes. 11 Q. Why would that be an important question to 12 know in this case? 13 A. Well, "capacity" means the maximum volume or 14 the maximum ability of something to do something. 15 And if fewer vessels can traverse the river in the 16 area of the marine floating barrier than before, then 17 it has impacted navigable capacity. 18 Q. Did you rely on the answer to -- the answer 19 that you received to number 3 on Timmel Exhibit No. 7 20 in your opinions in this case? 21 A. It confirmed my opinions in this case. 22 Q. And instead of having to do this for each 23 question, I'm just going to ask for the whole 24 document. 25 A. Okay.</p>	<p style="text-align: right;">96</p> <p>1 the same time? 2 A. On the U.S. side of it, it was certainly one 3 vessel at a time and only one-way traffic. 4 On the other side you could have two 5 vessels at a time, but operating at a much slower 6 speed. 7 Q. Okay. So let's try to orient this because 8 maybe I'm -- I want to make sure the record is clear 9 and the court can understand. 10 So approximately how many feet across is 11 the Rio Grande River in the location where the buoys 12 are? 13 A. Approximately 300 feet by inspection of 14 photographs, and that changes constantly depending 15 upon the stage of the river or the height of the 16 river. 17 Q. The day that you were there -- 18 A. Yes. 19 Q. -- approximately -- for the site visit in 20 February, approximately how many feet across was the 21 Rio Grande River where the buoys were located? 22 A. I would say 250 to 300 feet. 23 Q. 250 to 300 feet. And you were on an airboat 24 that was, I think you said, 8 feet wide and 20 feet 25 long?</p>
<p style="text-align: right;">95</p> <p>1 Q. Is the answer -- is your answer the same for 2 the whole document, that it just bolstered the 3 opinion you already had; you didn't rely on it in 4 forming an opinion in this case? 5 A. That is correct. I'd formed my opinions 6 prior. 7 Q. Perfect. Okay. I won't bother you with 8 that question again and again. 9 A. Thank you. 10 Q. Let's go on to number 4. Can you read the 11 question and answer for number 4 because I have some 12 follow-up questions. 13 A. "Has the marine floating barrier impacted 14 the density of vessel traffic, i.e., are vessels 15 forced to operate more closely together because of 16 the reduced area in which to operate?" 17 And the answer was "Yes, only one boat 18 can be in the area of the location of the buoys." 19 Q. But that's not true, right? Because a 20 moment ago you testified that when you did your site 21 visit in February there were three boats that 22 accompanied you on that trip, and you guys went up, 23 down, and around the buoys, right? 24 A. Not at the same time, no. 25 Q. So you weren't able to go past the buoys at</p>	<p style="text-align: right;">97</p> <p>1 A. Correct. 2 Q. And it's your testimony today that only one 3 boat at a time could pass by the buoys. Is that 4 correct? 5 A. On the U.S. side of the barrier, yes. 6 Q. What do you mean "the U.S. side of the 7 barrier"? 8 A. Well, the barrier runs parallel to the 9 international border. So on the U.S. side -- on one 10 side of it is U.S. territory, and the other side is 11 Mexican territory. 12 Q. I see. So everything on the far side of the 13 buoys is Mexico? 14 A. Yes. 15 Q. And everything between the buoys and the 16 U.S. bank is U.S. waters, right? 17 A. That is correct -- no, not between the 18 buoys. I'm sorry. Between the international 19 boundary which is approximately located in the center 20 of the river, but it constantly moves with the rise 21 and fall of the height of the river. 22 Q. So we've got 300 feet across. 23 A. Approximately. 24 Q. Approximately. And a moment ago you 25 testified that the buoys were the international</p>

<p>98</p> <p>1 boundary, but now you're saying that's not accurate. 2 Is that correct? 3 A. I don't recall -- I don't believe I said 4 that. If I did, I misspoke. It's not the buoys. 5 It's -- I always said that the barriers was on the 6 U.S. side of the river, and then -- in fact, was 7 moved even closer to the U.S. side because of some 8 sort of issue with the boundary moving. 9 Q. Okay. Approximately how many feet from the 10 bank of the U.S. side were the buoys located on the 11 day that you did the site visit in February of 2024? 12 A. Maybe 75 feet. It depends on where along 13 the barrier at the down river end of it -- the up 14 river end of it, it -- the bank curves, so it 15 converges and it's much closer. Probably 40 feet, 16 40, 50 feet. 17 Q. So at the narrowest point between the U.S. 18 bank and the buoys it's approximately 40 feet? 19 A. Yes, but there is a shoal in that area that 20 restricts navigation of vessels in that area so it's 21 even constricted more. 22 Q. Okay. We'll come back to that. 23 At the widest point, how many feet from 24 the U.S. bank is the -- are the buoys? 25 A. This is all done by visual inspection, but a</p>	<p>100</p> <p>1 we just go ahead and take look at your expert report? 2 A. I would. I should have asked to do that. 3 Q. And I'm on page 28 of what we've marked as 4 Timmel Exhibit 1. 5 A. Yes. 6 Q. Okay. I'm going to give you a minute to 7 examine that, and then I'm going to ask these 8 questions again, okay? 9 A. And it should be pointed out that this 10 photograph was not taken on the day I was there. 11 This photograph was taken previously. So I'm not 12 aware of the stage of the river at the time that this 13 photograph was taken. And so I -- it would be very 14 difficult to compare it to the day I was there 15 because I don't know that the conditions were the 16 same. 17 Q. So is it fair to say that this aerial image 18 isn't helpful to you in determining how many feet the 19 buoys are from the U.S. bank and from the 20 international boundary on the day that you visited in 21 February of 2024? 22 A. Well, as you can see, the buoy line is not a 23 very precise straight line. It has a -- some slow 24 curves throughout it. 25 What it is helpful in doing is measuring</p>
<p>99</p> <p>1 hundred feet, maybe 125 -- no, a hundred feet. 2 Q. So between 140 feet from the U.S. bank from 3 widest to closest. That's where the buoys are 4 located in the Rio Grande River? 5 A. I'm sorry, repeat your question. 6 Q. All right. So the buoys are located between 7 100 feet and 40 feet from the U.S. bank? 8 A. Yes. 9 Q. How many feet are the buoys located at the 10 closest point to the international boundary in the 11 Rio Grande River on the day that you visited in 12 February of 2024? 13 A. On the closest point, probably about 50 14 feet. 15 Q. And at the furthest point, how many feet 16 away from the international boundary in the Rio 17 Grande River were the buoys located when you did the 18 site visit in February of 2024? 19 A. I need a clarification of your question 20 because when you asked this follow-up question, it 21 made me think that maybe I was getting it backwards. 22 So the international boundary is 23 approximately 150 feet from the U.S. border -- from 24 the U.S. bank of the river. And at -- 25 Q. Let's look at your -- would it be helpful if</p>	<p>101</p> <p>1 how far away it is from -- well, actually the 2 boundary line could change, the border line could 3 change as well. So to give one an approximate idea, 4 I think this is helpful; to give one precise numbers, 5 not so much. 6 Q. Okay. 7 MR. STONE: Landon, can I borrow your 8 pen? 9 MR. WADE: Sure. 10 Q. (BY MR. STONE) I'm giving you a pen. 11 A. Okay. 12 Q. I want you to mark on Exhibit No. 14, which 13 is on page 28 of your expert report, the location 14 where the buoys are so close to either the 15 international boundary or the U.S. bank that only one 16 airboat that is 8 feet wide and 20 feet long can pass 17 along it, going up or down the river. 18 A. Well, certainly at the north end of this, 19 and I can mark that. 20 Q. Please do. 21 A. It is one-way traffic. As a matter of fact, 22 the -- 23 Q. Captain Timmel, I'm just asking you to mark 24 it. 25 A. Okay.</p>

<p style="text-align: right;">102</p> <p>1 Q. We'll go through them each. Just go ahead</p> <p>2 and mark them.</p> <p>3 A. I would say it's not safe to run two boats</p> <p>4 through that area at any time.</p> <p>5 What is not shown by this, sir, perhaps</p> <p>6 what you don't realize, is there's not good water all</p> <p>7 the way to the bank of the -- of the river. There's</p> <p>8 lots of shoal areas through here, many of which are</p> <p>9 now exposed with vegetation growing on them that</p> <p>10 weren't there the first time of my -- the time of my</p> <p>11 first visit.</p> <p>12 Q. So would it be fair to say -- are you</p> <p>13 circling the entire image?</p> <p>14 A. Yes.</p> <p>15 Q. Do you want to just go ahead and circle the</p> <p>16 whole image?</p> <p>17 A. (Writing on document.)</p> <p>18 Q. All right. Can I see that real quick? I'll</p> <p>19 mark this later, but I want to go ahead and flag it.</p> <p>20 Can I have your pen?</p> <p>21 MR. STONE: I'm going to make this --</p> <p>22 what number am I at, 10?</p> <p>23 THE REPORTER: 11.</p> <p>24 (Timmel Exhibit 11 marked.)</p> <p>25 MR. STONE: I'm going to make this</p>	<p style="text-align: right;">104</p> <p>1 It certainly reduces the level of safety for more</p> <p>2 than one vessel to travel.</p> <p>3 Does it make it unsafe? Not in every</p> <p>4 circumstance, but it certainly does in some</p> <p>5 circumstances, and it makes it less safe than if the</p> <p>6 barrier was not there.</p> <p>7 Q. Okay. Let's go back to question 4 on Timmel</p> <p>8 Exhibit 7. This is really what we're talking about.</p> <p>9 It says, only -- we started here with the answer to</p> <p>10 question 4, which was, "Only one boat can be in the</p> <p>11 area of the location of the buoys." Do you see that</p> <p>12 on the screen?</p> <p>13 A. I do.</p> <p>14 Q. All right. And then we started talking</p> <p>15 specifically about the buoys and where they are in</p> <p>16 relation to the U.S. bank and the international</p> <p>17 boundary, right?</p> <p>18 A. Correct.</p> <p>19 Q. Do you agree that only one boat -- and I</p> <p>20 asked you -- strike that.</p> <p>21 I said, "That's not true. You were</p> <p>22 there on your site visit in February with three</p> <p>23 boats, and you guys went up, down, and around the</p> <p>24 boys." And you said, "Yes, it is true. We couldn't</p> <p>25 do it all at the same time." Do you recall that?</p>
<p style="text-align: right;">103</p> <p>1 Timmel 11.</p> <p>2 Q. (BY MR. STONE) I'm giving you back this</p> <p>3 document.</p> <p>4 A. Thank you.</p> <p>5 Q. So you've marked the entirety of the stretch</p> <p>6 here along the buoys between the U.S. bank and the</p> <p>7 buoys as being unsafe for more than one airboat that</p> <p>8 is 8 feet wide and 20 feet long to travel up and down</p> <p>9 at the same time, correct?</p> <p>10 A. Yeah. Can we go back to where we were -- to</p> <p>11 that question, please? That -- I would like to look</p> <p>12 at that question if I may.</p> <p>13 Q. The question I asked you was to mark -- just</p> <p>14 confirming what the image says that you marked, I</p> <p>15 asked you to circle on the image where, along the</p> <p>16 stretch of the buoys, you're testifying that two 8 by</p> <p>17 20 -- or, sorry, more than one 8 by 20 airboat could</p> <p>18 not simultaneously travel up and down.</p> <p>19 And you circled the whole thing and said</p> <p>20 that it was not safe for more than -- for what you</p> <p>21 call one-way traffic at any time. Do you recall</p> <p>22 that?</p> <p>23 A. I do recall that.</p> <p>24 Q. Okay.</p> <p>25 A. And I'm uncertain as to exactly what I said.</p>	<p style="text-align: right;">105</p> <p>1 A. I do.</p> <p>2 Q. Okay. Is it still your testimony -- strike</p> <p>3 that. Let me just ask.</p> <p>4 Can only one boat travel up and down the</p> <p>5 Rio Grande River at the location where the buoys are</p> <p>6 located?</p> <p>7 A. No, that's not -- that's not accurate, no.</p> <p>8 What is accurate that only one vessel</p> <p>9 can move up or down the Rio Grande safely on the side</p> <p>10 between the buoys and the U.S. bank, not the</p> <p>11 entire -- we're not talking about the entire river</p> <p>12 here.</p> <p>13 The border is an imaginary line, and</p> <p>14 there is enough water between the barrier and the</p> <p>15 Mexican bank for more than one vessel to maneuver at</p> <p>16 one time.</p> <p>17 Q. So it's your testimony that between the U.S.</p> <p>18 bank and the buoys only one vessel, in this case an</p> <p>19 airboat, can safely travel up and down at a time?</p> <p>20 A. You could -- the barrier is a thousand feet</p> <p>21 long. You could have more than one vessel moving in</p> <p>22 front of or behind another vessel, but not side by</p> <p>23 side, not overtaking each other, not passing each --</p> <p>24 not meeting each other.</p> <p>25 Q. How close can an airboat, an 8 by 20</p>

<p style="text-align: right;">106</p> <p>1 airboat, travel adjacent to another 8 by 20 airboat?</p> <p>2 A. They can come right up alongside each other</p> <p>3 if they're moving at a very slow rate of speed and</p> <p>4 the operators were talented.</p> <p>5 Q. So we have 8 feet adjacent to another 8</p> <p>6 feet, right?</p> <p>7 A. Okay.</p> <p>8 Q. So we've got 16 feet, right?</p> <p>9 A. Okay.</p> <p>10 Q. So let's say we put a foot in between them.</p> <p>11 So we've got 17 feet, okay? Two adjacent airboats</p> <p>12 with one foot in between them can travel next to each</p> <p>13 other but not between the U.S. bank and the buoys in</p> <p>14 this case?</p> <p>15 A. Not safely, no.</p> <p>16 Q. And why can't they travel safely next to</p> <p>17 each other going between the U.S. bank and the buoys</p> <p>18 in this case traveling up or down the river?</p> <p>19 A. Airboats have to have some speed ahead, and</p> <p>20 they don't have ability to stop or go into neutral or</p> <p>21 go into reverse. And if one of the two airboats were</p> <p>22 to veer off course or were to sheer off of a shoal or</p> <p>23 strike one of the concrete mooring blocks, it could</p> <p>24 force them into the other boat, to collide with the</p> <p>25 other boat.</p>	<p style="text-align: right;">108</p> <p>1 Q. Have you ever -- how many -- strike that.</p> <p>2 Other than the trip -- other than the</p> <p>3 one time you drove it -- you drove an airboat and</p> <p>4 your trips to the Rio Grande River where you rode in</p> <p>5 an airboat, approximately how many times have you</p> <p>6 ridden on an airboat?</p> <p>7 A. Six or seven times.</p> <p>8 Q. How old are you?</p> <p>9 A. I'm 68.</p> <p>10 Q. 68. So six or seven times, other than those</p> <p>11 three trips we just talked about, in your entire 68</p> <p>12 years of living. Is that fair?</p> <p>13 A. That's correct. I'm not suggesting I'm an</p> <p>14 airboat spec -- expert.</p> <p>15 Q. Okay. You're not an expert on airboats?</p> <p>16 A. No, I'm not.</p> <p>17 Q. You're not an expert on how far away</p> <p>18 airboats have to stay in order to operate safely when</p> <p>19 they're traveling next to each other?</p> <p>20 A. I am an expert on safe boat operations, so I</p> <p>21 feel I am qualified to offer an expert opinion on</p> <p>22 that, yes.</p> <p>23 Q. What is the basis for your expert opinion</p> <p>24 that airboats cannot travel safely next to each other</p> <p>25 between the bank of the Rio Grande Riv -- bank of</p>
<p style="text-align: right;">107</p> <p>1 Q. Is it your testimony that if the buoys were</p> <p>2 not there, two airboats could travel in that same</p> <p>3 stretch adjacent to each other --</p> <p>4 A. Yeah --</p> <p>5 Q. -- up and down the river?</p> <p>6 A. -- yes. With a safe distance between them.</p> <p>7 Q. And how much would a safe distance be in the</p> <p>8 airboats that you've described?</p> <p>9 A. It depends on the conditions and</p> <p>10 circumstances.</p> <p>11 Q. What about the conditions and circumstances</p> <p>12 when you visited in February of 2024?</p> <p>13 A. I would say 8 to 10 feet.</p> <p>14 Q. 8 to 10 feet. Do you have a lot of</p> <p>15 experience with airboats?</p> <p>16 A. I have experience with airboats.</p> <p>17 Q. When is the last time you drove an airboat?</p> <p>18 A. I have -- it would have been 10 to 12 years</p> <p>19 ago.</p> <p>20 Q. Total, approximately how many times have you</p> <p>21 driven an airboat?</p> <p>22 A. Just once.</p> <p>23 Q. So you've only ever driven an airboat one</p> <p>24 time 12 years ago?</p> <p>25 A. That's correct.</p>	<p style="text-align: right;">109</p> <p>1 the -- the bank and the buoys in this case?</p> <p>2 A. Well, with the anchors of the buoys not</p> <p>3 being marked and the uncertainty of where they are</p> <p>4 located and the inability to see how far the shoals</p> <p>5 extend from the bank -- U.S. bank into the water so</p> <p>6 as to determine what the width of safe navigable</p> <p>7 water is in that area, it's just not safe, and it was</p> <p>8 certainly reinforced by the answers to that question</p> <p>9 number 4.</p> <p>10 Boats, particularly airboats that are</p> <p>11 flat-bottomed, are not like cars on a highway that</p> <p>12 have wheels that hold them in place. They are</p> <p>13 subject to currents and wind and can move back and</p> <p>14 forth and do what they -- is known as yawing, which</p> <p>15 is moving back and forth instead of up or down or</p> <p>16 sideways, which makes it unsafe or less safe to</p> <p>17 travel in close proximity to -- one boat to another.</p> <p>18 Q. What's a shoal?</p> <p>19 A. A shoal is a shallow area in the river.</p> <p>20 Q. What impact do shoals have on airboats</p> <p>21 traveling on the Rio Grande River in this area?</p> <p>22 A. It would depend upon the depth of the shoal.</p> <p>23 Q. Okay. Well, what about the -- I'm asking</p> <p>24 about the shoals where the buoys are located. What</p> <p>25 impact do the shoals where the buoys are located in</p>

<p style="text-align: right;">110</p> <p>1 the Rio Grande River have on the ability of airboats 2 to travel up and down the Rio Grande River? 3 A. If they are too shallow, it can impede the 4 progress an of an airboat unless they go up and over 5 the shoal, which they're oftentimes not inclined to 6 do, or it could -- it would cause them to sheer a 7 little bit and not steer in a straight line. 8 Q. So you have identified two things. The 9 second one was the impact a shoal could have is it 10 would -- it could prevent the airboat from traveling 11 in a straight line, right? 12 A. That's correct. 13 Q. And then the second one is the boat operator 14 may have to drive over the shoal. Is that -- 15 A. That's correct. 16 Q. So other than driving over the shoal or not 17 being able to drive in a straight line, would a shoal 18 have any other impact on an airboat -- would the 19 shoals where the buoys are located in the Rio Grande 20 River have any other impact on an airboat? 21 A. No. 22 Q. Let's go back to Timmel Exhibit 7. Could 23 you read the question and answer for number 5? 24 A. "Does the marine floating barrier make 25 performing duties required by your job more</p>	<p style="text-align: right;">112</p> <p>1 right? 2 A. Can we go back to 7 first? Can I answer -- 3 I'm not -- I was thinking about something else, as I 4 was answering, that you were saying. 5 Q. Yeah. My question about number 7 was it 6 appears that the person who is answering this 7 document is someone who observed the installation of 8 the buoys? 9 A. Yes. It says it was. 10 Q. Okay. Okay. So I'm going to go on to 8. 11 It says, "If yes," and then -- we'll do this all 12 again -- "What would you estimate the deepest draft 13 of any of those vessels to be?" And it says, 14 "Approximately 3 feet," right. 15 A. And you're looking at "c"? 16 Q. 8c. 17 A. Yeah. 18 Q. On Timmel Exhibit 7. 19 A. Okay, yes. 20 Q. What is a draft? 21 A. A draft is the depth of a vessel, how far it 22 extends into the water. 23 Q. Next I want to ask about number 10. This is 24 still Timmel Exhibit 7, question 10. 25 Could you read the question and the</p>
<p style="text-align: right;">111</p> <p>1 difficult?" 2 The answer is "Yes, navigational hazards 3 are rest" -- "Yes, navigational hazards and 4 restricted operating area" which is what essentially 5 I just said. 6 Q. Uh-huh. And then number 7, could you read 7 the question and answer? I have a follow-up about 8 this. 9 A. "Did you or any of your fellow officers 10 observe the installation of the marine floating 11 barrier?" "Yes, I observed the installation daily to 12 report up the chain of command the State of Texas 13 progress." 14 Q. So it appears that the unknown person that 15 may be answering this document observed the 16 installation of the buoys. Does that seem fair? 17 A. It does. 18 Q. So I want to go on to number 8. It says, 19 "If yes," and then there is a series of questions. 20 A. Excuse me. I was distracted. Repeat that 21 last question please. 22 Q. Yeah, yeah. It says, number 8, "If yes," 23 and I want to ask about "c": "What would you 24 estimate the deepest draft of any of those vessels to 25 be?" And the answer is "Approximately 3 feet,"</p>	<p style="text-align: right;">113</p> <p>1 answer? 2 A. Yes. "What size vessels can they 3 accommodate?" And then the answer is "Airboats, 4 18 feet and the RSDV (Riverine Shallow Draft Vessel) 5 21 feet." 6 Q. And this question -- I didn't want to have 7 to read the whole answer. It's a response to -- it's 8 a follow-up to question 9, which is about the boat 9 ramps in the Eagle Pass area, right? 10 A. Yes. 11 Q. So I want to ask about these specific boats. 12 We already talked about airboats, right? 13 A. We have, yes. 14 Q. So what is an RSDV? 15 A. RSVD. 16 Q. Oh, I'm sorry. RS -- 17 A. It's supposed to be -- 18 Q. Is it or RSDV or RSVD? 19 A. It's RVSD. It's a -- and they messed up the 20 spelling of the acronym. 21 Q. Sure. 22 A. It's Riverine Vessel Shallow Draft. 23 Q. And can you describe that type of craft to 24 us for the record? 25 A. I can. It's -- in this case it's a 21-foot</p>

<p style="text-align: right;">114</p> <p>1 boat. It looks like a traditional boat, not</p> <p>2 dissimilar to a center console boat, if you're</p> <p>3 familiar with that, a typical fishing boat, with a</p> <p>4 console in the center and steering wheel and so</p> <p>5 forth. But it is propelled by jets, not by outboard</p> <p>6 motors or inboard motors.</p> <p>7 Q. What is the draft of an RVD -- did I do it</p> <p>8 right?</p> <p>9 A. RVSD.</p> <p>10 Q. RVSD. What is the draft of an RVSD?</p> <p>11 A. While it's not moving, about a foot and a</p> <p>12 half, and while it's up on plane, about 8 inches.</p> <p>13 Q. What is the weight limit on an RVSD?</p> <p>14 A. I do not know.</p> <p>15 Q. Do you know what the maximum capacity for --</p> <p>16 strike that.</p> <p>17 What is the maximum number of people</p> <p>18 that can be on an RVSD?</p> <p>19 A. Yesterday we had five.</p> <p>20 Q. Have you -- are you very familiar with</p> <p>21 RVSDs?</p> <p>22 A. No.</p> <p>23 Q. Have you ever driven an RVSD?</p> <p>24 A. I've driven jet-powered boats and jet skis,</p> <p>25 which are the same concept, but a riverine boat,</p>	<p style="text-align: right;">116</p> <p>1 been on many -- maybe a dozen or so jet propelled</p> <p>2 boats and countless jet skis. So I feel like I have</p> <p>3 a very good and thorough understanding of the boat</p> <p>4 and how it operates and what its operating parameters</p> <p>5 are.</p> <p>6 Q. Are you an expert on jet skis?</p> <p>7 A. No.</p> <p>8 Q. So you're not an expert on jet skis, but</p> <p>9 you're an expert on RVSDs which operate just like a</p> <p>10 jet ski?</p> <p>11 MR. LYNK: Object to form.</p> <p>12 A. If I stated that I was an expert on RVSDs,</p> <p>13 then I misspoke. I'm certainly not an expert on</p> <p>14 those boats.</p> <p>15 Q. Okay.</p> <p>16 MR. STONE: I think the judge is on the</p> <p>17 line, so let's take this call.</p> <p>18 THE REPORTER: Off the record?</p> <p>19 MR. STONE: Off the record.</p> <p>20 THE VIDEOGRAPHER: Off the record. The</p> <p>21 time is 1:16.</p> <p>22 (Discussion off the record.)</p> <p>23 THE VIDEOGRAPHER: Back on the record</p> <p>24 the time is 1:17.</p> <p>25 MR. LYNK: Did that call interrupt an</p>
<p style="text-align: right;">115</p> <p>1 which is designed for extremely shallow draft and</p> <p>2 shallow areas, no, I have not.</p> <p>3 Q. So the RVSD is kind of like a jet ski?</p> <p>4 A. Yes, very similar in terms of its</p> <p>5 propulsion.</p> <p>6 Q. But in terms of its size, is it similar to a</p> <p>7 jet ski?</p> <p>8 A. No, it's much larger.</p> <p>9 Q. So in your 68 years of living, you've -- I</p> <p>10 think you testified you have never operated an RVSD?</p> <p>11 A. That is correct.</p> <p>12 Q. In your 68 years of living, approximately</p> <p>13 how many times have you ridden on an RVSD?</p> <p>14 A. One time.</p> <p>15 Q. And was that one time yesterday?</p> <p>16 A. It was.</p> <p>17 Q. You're not an expert on RVSDs, are you?</p> <p>18 A. As a harbor pilot, I've been -- I've</p> <p>19 conducted over 8,000 transits of different types of</p> <p>20 vessels over the last 32 years, and one becomes very</p> <p>21 familiar and very comfortable with underst -- being</p> <p>22 able to understand different propulsion systems and</p> <p>23 different types of vessels and being able to adapt</p> <p>24 them and operate them.</p> <p>25 So I have only been on one once. I've</p>	<p style="text-align: right;">117</p> <p>1 answer to a question? I can't remember.</p> <p>2 MR. STONE: I think he was done. You</p> <p>3 were done, right?</p> <p>4 THE WITNESS: I don't recall.</p> <p>5 THE REPORTER: The last answer is "If I</p> <p>6 stated I was an expert on RVSDs, then I misspoke."</p> <p>7 Q. (BY MR. STONE) Let's switch to your</p> <p>8 deposition -- I'm sorry -- to your expert report. I</p> <p>9 have some follow-up questions.</p> <p>10 Does your expert report contain a</p> <p>11 complete statement of all the opinions that you will</p> <p>12 express in this case and the bases for them?</p> <p>13 A. At this time, yes.</p> <p>14 Q. Does your report, Timmel Exhibit 1, contain</p> <p>15 the facts or data considered by you in forming all of</p> <p>16 your opinions in this case that you're going to</p> <p>17 express?</p> <p>18 A. It does.</p> <p>19 Q. Does it contain all the exhibits that will</p> <p>20 be used to summarize or support your opinions in this</p> <p>21 case?</p> <p>22 A. At this time, yes.</p> <p>23 Q. Did you write your expert report?</p> <p>24 A. I did.</p> <p>25 Q. Did you use any artificial intelligence in</p>

<p>118</p> <p>1 the preparation of your expert report?</p> <p>2 A. No, but I thought about it.</p> <p>3 Q. Did anyone else assist you in writing the</p> <p>4 expert report?</p> <p>5 A. I had others proofread it for me, but nobody</p> <p>6 writing any of the substantive material in it.</p> <p>7 Q. How many hours approximately did you spend</p> <p>8 writing your expert report?</p> <p>9 A. I don't know.</p> <p>10 Q. Are you billing in this case?</p> <p>11 A. I am.</p> <p>12 Q. Did you bill for the time that you spent</p> <p>13 preparing your expert report?</p> <p>14 A. I did.</p> <p>15 Q. Approximately how many hours have you billed</p> <p>16 so far in the case?</p> <p>17 A. I'm estimating, but about 160.</p> <p>18 Q. And of those 160 or so hours in the case</p> <p>19 that you've billed so far, approximately how many of</p> <p>20 them were spent working on your expert report?</p> <p>21 A. A large number of them, but I would have to</p> <p>22 go back and review my bills to know what I was</p> <p>23 working on during the time I was working.</p> <p>24 Q. Do you think you spent more than half of</p> <p>25 your time that you billed in the case working on the</p>	<p>120</p> <p>1 case.</p> <p>2 What facts did the attorneys provide to</p> <p>3 you that you considered in forming the opinions that</p> <p>4 you would express in this case?</p> <p>5 A. They provided all of the evidence that I</p> <p>6 reviewed, all of the -- other than some of the photos</p> <p>7 I took and observations I made during the site</p> <p>8 visits, but all of the court documents and some trial</p> <p>9 testimony, photographs. So the majority of the</p> <p>10 documents, other than research that I have footnoted</p> <p>11 as such that I did on my own.</p> <p>12 Q. Okay. Can you turn to page 34 of your</p> <p>13 expert report? This is the documents, materials, and</p> <p>14 data considered. Let me know when you get there.</p> <p>15 A. I'm there.</p> <p>16 Q. Are any of the documents that are listed in</p> <p>17 Section 7 of your expert report -- strike that.</p> <p>18 Identify for me any documents in</p> <p>19 Section 7 of your expert report that were not</p> <p>20 provided to you by the attorneys in the case.</p> <p>21 A. I would have to see a list of these</p> <p>22 documents -- well, all of the hearing exhibits were</p> <p>23 provided to me.</p> <p>24 THE REPORTER: I'm sorry, all the what?</p> <p>25 THE WITNESS: Hearing exhibits.</p>
<p>119</p> <p>1 expert report?</p> <p>2 A. I can't say definitively.</p> <p>3 Q. Did you spend more than ten hours working on</p> <p>4 the expert report?</p> <p>5 A. Certainly.</p> <p>6 Q. More than 20 hours?</p> <p>7 A. Certainly.</p> <p>8 Q. More than 40 hours?</p> <p>9 A. Yes.</p> <p>10 Q. More than 60 hours?</p> <p>11 A. Yes.</p> <p>12 Q. More than 80 hours, or two weeks?</p> <p>13 A. I believe so.</p> <p>14 Q. More than 120 hours?</p> <p>15 A. I don't think so.</p> <p>16 Q. So approximately somewhere between 80 and</p> <p>17 120 hours?</p> <p>18 A. If you're wanting an estimate, yes, that</p> <p>19 would be my best estimate.</p> <p>20 Q. But if we -- your bill would actually</p> <p>21 reflect the actual amount of time that you spent</p> <p>22 working on the expert report, right?</p> <p>23 A. Very precisely.</p> <p>24 Q. So let me ask some questions about some of</p> <p>25 the attorney communications you have had in this</p>	<p>121</p> <p>1 A. The item T, Shelby's [sic] declaration.</p> <p>2 Item U. Again, the next page is the hearing</p> <p>3 exhibits. The photos that were hearing exhibits.</p> <p>4 If you go to number 5 on page 36, the</p> <p>5 reference resources --</p> <p>6 Q. Uh-huh.</p> <p>7 A. -- those would be the references that are</p> <p>8 referred to in the footnotes within the report, and</p> <p>9 that was research I did independently.</p> <p>10 Q. Okay.</p> <p>11 A. Number 6, U.S. Regulations & Codes, A, B,</p> <p>12 and C; websites, number 7. Those are all</p> <p>13 independently found. And that continues through the</p> <p>14 end of the list of documents and resources.</p> <p>15 Q. So 5, 6, and 7 in section 7 of your expert</p> <p>16 report are all documents that you independently found</p> <p>17 and relied on?</p> <p>18 A. That is correct.</p> <p>19 Q. I have a question about the -- one of these</p> <p>20 documents. It -- if you look under number 3 -- this</p> <p>21 is on page 35, I believe.</p> <p>22 A. Which letter?</p> <p>23 Q. Number 3A.</p> <p>24 A. 3A, okay. Yes, I see that. Okay.</p> <p>25 Q. Documents from Cochrane Global, right?</p>

<p>122</p> <p>1 A. Yes.</p> <p>2 Q. When did you receive those documents?</p> <p>3 A. According to what I have listed here, May</p> <p>4 8th.</p> <p>5 Q. And did you sign any kind of confidentiality</p> <p>6 agreement in order to receive those documents?</p> <p>7 A. I did.</p> <p>8 Q. Did you sign it prior to May 8th?</p> <p>9 A. Yes.</p> <p>10 Q. Did you sign it on May 8th?</p> <p>11 A. I don't recall. I signed it prior to</p> <p>12 receiving the documents.</p> <p>13 Q. Other than the documents that are listed</p> <p>14 here that we've discussed, were there any other facts</p> <p>15 that were provided to you by the attorneys in this</p> <p>16 case that you relied on in forming your opinions in</p> <p>17 this case?</p> <p>18 A. Not that I recall.</p> <p>19 Q. What data did the attorneys provide to you</p> <p>20 that you considered in forming your opinions that</p> <p>21 you're expressing in this case?</p> <p>22 A. Well, I looked at all of it and reviewed and</p> <p>23 analyzed and considered it all. Specifically which</p> <p>24 parts of it, I'm uncertain.</p> <p>25 Q. Is there any data that the attorneys</p>	<p>124</p> <p>1 A. I know. I was just making that comment if</p> <p>2 that's all right.</p> <p>3 I've seen that email, yes. You can go</p> <p>4 to the next one.</p> <p>5 Q. I will in just a moment.</p> <p>6 A. Okay.</p> <p>7 Q. So I want to start here at the top of Timmel</p> <p>8 Exhibit 10. This is an email that was sent to -- to</p> <p>9 you, John Timmel, right?</p> <p>10 A. Correct.</p> <p>11 Q. It was sent from Brian Lynk, right?</p> <p>12 A. Correct.</p> <p>13 Q. And the subject line says, "Follow-up</p> <p>14 questions from Timmel for CPB [sic]," right?</p> <p>15 A. Yes.</p> <p>16 Q. It goes on to say, "Please find written</p> <p>17 answers from George Cavazos at CPB to your recent</p> <p>18 follow-up questions," right?</p> <p>19 A. Yes.</p> <p>20 Q. And it's a forwarded email, right?</p> <p>21 A. Yes.</p> <p>22 Q. Did you review this email thread prior to</p> <p>23 today?</p> <p>24 A. Yes.</p> <p>25 Q. Did you rely on any of the information</p>
<p>123</p> <p>1 provided you, other than what is listed in Section 7</p> <p>2 of your expert report, that you relied on in forming</p> <p>3 your opinions that you've expressed in this case?</p> <p>4 A. No.</p> <p>5 Q. What assumptions did the attorneys in this</p> <p>6 case provide to you that you considered in forming</p> <p>7 your opinions in this case?</p> <p>8 A. None that I'm aware of. None that I can</p> <p>9 recall.</p> <p>10 Q. You weren't asked to assume anything for the</p> <p>11 purposes of this case and in forming your expert</p> <p>12 opinions?</p> <p>13 A. Absolutely not.</p> <p>14 Q. Next I want to show you what we have marked</p> <p>15 as Exhibit 10. Bear with me a minute. I need to</p> <p>16 drop this in the chat for everyone else.</p> <p>17 I'm showing you what we've marked as</p> <p>18 Timmel Exhibit No. 10. So it's a series of emails.</p> <p>19 Do you recognize these mails?</p> <p>20 A. If you could scroll very slow -- oh, I'll</p> <p>21 tell you when to move to the next section. I would</p> <p>22 like to look at it all.</p> <p>23 Cava -- Cavazos is the name I've been</p> <p>24 looking for and grossly mispronouncing.</p> <p>25 Q. I'm just asking if you --</p>	<p>125</p> <p>1 contained in this email thread in forming your</p> <p>2 opinions in this case?</p> <p>3 A. Well, I would have to see the entire email</p> <p>4 thread to be able --</p> <p>5 Q. Sure.</p> <p>6 A. -- to respond to that.</p> <p>7 Q. Let's start at the very bottom and work our</p> <p>8 way up.</p> <p>9 MR. LYNK: Are you going to move at a</p> <p>10 pace that he can actually see what you're scrolling?</p> <p>11 Q. (BY MR. STONE) So the first email that we</p> <p>12 have here is sent on February -- I'm on page 3 of</p> <p>13 Timmel Exhibit 10.</p> <p>14 A. Okay.</p> <p>15 Q. Do you see the email that was sent on</p> <p>16 February 28th of 2024?</p> <p>17 A. I do.</p> <p>18 Q. It was sent by David Sorola?</p> <p>19 A. Correct.</p> <p>20 Q. Who is David Sorola?</p> <p>21 A. He is the counsel for CBP, I believe,</p> <p>22 Immigration in Del Rio, Texas.</p> <p>23 Q. And there's some other names on her as well</p> <p>24 including Micky Donaldson. Do you know who Micky</p> <p>25 Donaldson is?</p>

<p style="text-align: right;">126</p> <p>1 A. I do not.</p> <p>2 Q. There's a Belinda Garman. Do you know who</p> <p>3 Belinda Garman is?</p> <p>4 A. I do not.</p> <p>5 Q. There's a Megan Gray. Do you know who Megan</p> <p>6 Gray is?</p> <p>7 A. No, I do not.</p> <p>8 Q. The email says here -- and follow along and</p> <p>9 tell me if I'm reading it correctly -- "Good</p> <p>10 afternoon, George. John Timmel, the maritime expert</p> <p>11 out of Tampa whom I believe you met last week, has</p> <p>12 follow-up questions that he needs answered. He</p> <p>13 addressed them to AUSA Brian Lynk, and although his</p> <p>14 questions came through a separate email, I have cut</p> <p>15 and pasted word for word below the relevant part of</p> <p>16 his email with the questions he needs answered.</p> <p>17 Please answer these today, or by tomorrow morning at</p> <p>18 the latest, as Timmel is going out of town starting</p> <p>19 on Friday, and he needs the information below before</p> <p>20 he leaves. Please respond to me, and I will work to</p> <p>21 then provide the answers to AUSA Brian Lynk myself.</p> <p>22 Thank you, David." Did I read that accurately?</p> <p>23 A. You did.</p> <p>24 Q. Do you recall reaching out to -- reaching</p> <p>25 out with a series of follow-up questions for CBP</p>	<p style="text-align: right;">128</p> <p>1 vessel or plane through air, or, on a fan, it's</p> <p>2 actually what propels the air. And they can either</p> <p>3 be fixed, which means it's a set pitch and it doesn't</p> <p>4 move, or they can be variable, which means an</p> <p>5 operator can change the pitch on them.</p> <p>6 Q. Why was this an important piece of</p> <p>7 information to know when forming your opinions in</p> <p>8 this case?</p> <p>9 A. Because every airboat that I had experience</p> <p>10 with, that was the case, that they were fixed pitch.</p> <p>11 And what that means is the vessel cannot stop moving</p> <p>12 ahead other than by turning off the engine. And then</p> <p>13 when you do that, is the engine going to start again</p> <p>14 when the time comes?</p> <p>15 So what's very important to -- I wanted</p> <p>16 to make sure when they were talking about the</p> <p>17 airboats, if this was an airboat that had fixed pitch</p> <p>18 or variable pitch that would give it more</p> <p>19 maneuverability, and in fact they're fixed-pitch</p> <p>20 propellers.</p> <p>21 Q. Next it says, B, Reverse. "Do the USBP</p> <p>22 airboats have a reverse or am astern mode? If so,</p> <p>23 how does it do it?" Did I read that accurately?</p> <p>24 A. Yes.</p> <p>25 Q. Okay. So let's just, for the record, go</p>
<p style="text-align: right;">127</p> <p>1 after your site visit?</p> <p>2 A. I do.</p> <p>3 Q. And who did you direct those questions to?</p> <p>4 A. Brian Lynk.</p> <p>5 Q. Next we've got what is allegedly a word-for-</p> <p>6 word copy of that email that you sent to Brian Lynk.</p> <p>7 And there's a series of questions here, and I want to</p> <p>8 go through each.</p> <p>9 The first question, it says, "Airboat</p> <p>10 Propulsion," right.</p> <p>11 A. Yes.</p> <p>12 Q. Now earlier you testified that you're not an</p> <p>13 expert on airboats, right?</p> <p>14 A. That's correct.</p> <p>15 Q. So A -- under Airboat Propulsion, A,</p> <p>16 Propeller Pitch, "Do the USBP airboats have</p> <p>17 variable-pitch propellers?" Did I read that</p> <p>18 accurately?</p> <p>19 A. Yes.</p> <p>20 Q. What is USBP?</p> <p>21 A. United States Border Patrol.</p> <p>22 Q. What is a propeller pitch?</p> <p>23 A. The pitch of a propeller is the slant of a</p> <p>24 propeller, and, depending upon the pitch, as the</p> <p>25 propeller spins, it's what pulls the vehicle or</p>	<p style="text-align: right;">129</p> <p>1 through some of the terms. What is an astern mode?</p> <p>2 A. It's a reverse in your car, same thing.</p> <p>3 Q. Why would reverse be an important piece of</p> <p>4 information to know, whether the airboats can</p> <p>5 reverse, in forming your opinions in this case?</p> <p>6 A. That would certainly determine how quickly</p> <p>7 they could stop, or, if they're in a very confined</p> <p>8 area, can they back out of that area.</p> <p>9 Q. Next under C, you said "Idle speed. When</p> <p>10 the USBP boats are at idle speed, do they move</p> <p>11 forward, astern, or neither." Did I read that</p> <p>12 accurately?</p> <p>13 A. Yes.</p> <p>14 Q. Why is that important information to know</p> <p>15 about the airboats when forming an opinion in this</p> <p>16 case?</p> <p>17 A. Again, it's a -- seeking a verification of</p> <p>18 the maneuverability of these particular airboats.</p> <p>19 Q. Next is "D, Neutral. Do the USBP airboats</p> <p>20 have a neutral setting? If yes, do the propellers</p> <p>21 stop spinning when in neutral?" Did I read that</p> <p>22 accurately?</p> <p>23 A. Yes.</p> <p>24 Q. Why is that an important piece of</p> <p>25 information to know in this case?</p>

<p style="text-align: right;">130</p> <p>1 A. Because if you can keep the engine running 2 but disengage the propeller -- that is, put it into 3 neutral -- then the vessel can sit stationary in a 4 place. If you can't do that, then in order to be 5 stationary, of course discounting current and wind, 6 but just in terms of moving through the water by its 7 propulsion, it has to turn the engine off to do that. 8 Q. Next is "E, Maneuverability. Do the USBP 9 airboats, as maneuverable as boats of similar size 10 with inboard or outboard motors?" Did I read that 11 accurately? 12 A. You did. It's poorly worded on my part. It 13 should have said "Are they as maneuverable." But 14 other than -- yes, you read it accurately. 15 Q. Why would that be an important piece of 16 information to know in forming an opinion in this 17 case? 18 A. Again, just in terms of trying to determine 19 whether or not navigable capacity is reduced, that -- 20 if certain vessels are less maneuverable, then it 21 could be more restrictive on them than other types of 22 vessels. But in either case, if it impacts their 23 ability to operate safely in an area, then that has 24 an influence on navigable capacity. 25 Q. And the reason you had to ask is because you</p>	<p style="text-align: right;">132</p> <p>1 question before you asked it? 2 A. I did. 3 Q. The next question was "Do the water levels 4 in the Rio Grande change frequently?" Do you see 5 that on the screen? 6 A. Yes. 7 Q. Did you already know the answer to that 8 question before you asked? 9 A. I was less certain. River levels change 10 depending upon a lot of things, if they're 11 unencumbered rivers, such as snowfall or rain and 12 things along those lines. 13 When you have rivers with dams above a 14 certain area, then the river level can either be kept 15 steady or it can change, but slowly or infrequently. 16 So I did not know that prior to that to answering -- 17 to asking the question. 18 MR. STONE: This is Judge Howell. 19 THE VIDEOGRAPHER: Off the record. Time 20 is 1:38 p.m. 21 (Brief pause.) 22 THE VIDEOGRAPHER: Back on the record. 23 Time is 1:39. 24 (The following proceedings occurred 25 telephonically before Magistrate Howell.)</p>
<p style="text-align: right;">131</p> <p>1 didn't know this information already, right? 2 A. I wanted to verify that. 3 Q. So prior to this, you already knew the 4 propeller pitch of the airboats? 5 A. I didn't know the pitch, but I knew they -- 6 I was fairly certain that they were fixed-pitch based 7 on my experience with other boats. 8 Q. And you already knew before you asked this 9 question whether or not the airboats could reverse? 10 A. Yes, but I wanted to be sure. Could not 11 reverse, yes. 12 Q. And you knew that the -- you already knew 13 the idle speed, the neutral, and the maneuverability 14 questions that you asked, you already knew the 15 answers to those before you asked them as well? 16 A. I did. Looking for a confirmation. 17 Q. Next I want to ask about the -- continuing 18 on with this document -- I'm still on Timmel 19 Exhibit 10 -- Changing Water Levels. Do you see that 20 on the screen? 21 A. Yes. 22 Q. First question was "Do the water levels in 23 the Rio Grande River change?" 24 A. That's correct. 25 Q. Did you already know the answer to that</p>	<p style="text-align: right;">133</p> <p>1 MR. STONE: Excellent, Your Honor. So 2 the two questions, Your Honor, that came up, we are 3 currently taking an expert deposition in this case 4 from one of the USA's experts, designated testifying 5 experts in the case. He wrote an expert report, and 6 we're asking questions following up, obviously, on 7 that expert report. 8 He conducted a site visit back in 9 February of 2024, and we've asked some questions 10 about what he did during that site visit that he 11 discussed in his expert report. We asked two 12 questions that we kind of got stymied on and that we 13 raised an objection. 14 The first one, we asked him to describe 15 the detention -- the CBP, customs and border patrol, 16 detention facility that he toured. And the second 17 question was I asked him how long -- how long was 18 that tour of the CBP detention facility. 19 And Mr. Brian Lynk is here, and he 20 asserted a privilege and instructed the witness not 21 to answer, and I'll let him explain. 22 MR. LYNK: Your Honor, speaking for the 23 United States, this the Brian Lynk from the 24 Department of Justice. 25 First, I want to -- I'll give a bit of</p>

<p style="text-align: right;">134</p> <p>1 context. The witness answered questions about a tour 2 he made of the floating barrier site in the river. 3 And as part of that he mentioned that one of the 4 things early on that day was a briefing, prior to 5 going into the river, with personnel from CBP and 6 with the others who were on the tour. I allowed -- I 7 allowed him -- 8 THE REPORTER: Hang on. 9 MR. LYNK: -- to answer all the 10 questions first -- 11 (Simultaneous talking.) 12 JUDGE HOWELL: -- phone a little closer 13 to you? 14 MR. LYNK: Sure. 15 JUDGE HOWELL: I'm not hearing you as 16 clearly as I was hearing Mr. Stone. 17 MR. LYNK: Sorry about that. 18 So he answered all of the questions with 19 no instruction from me about the briefing he had been 20 given. He was then asked where was he? Where did 21 that briefing occur? And he said in the CBP 22 detention facility. 23 Now, he was allowed to answer that 24 question. The next question, as I recall it and as 25 my cocounsel sitting here from the U.S. attorney's</p>	<p style="text-align: right;">136</p> <p>1 he doesn't express any opinions about this -- his 2 opinions are about the barrier in the river -- 3 there's really no reason to risk and compromise CBP's 4 concerns and allow him to answer those. 5 MR. STONE: Your Honor, may I respond? 6 JUDGE HOWELL: Yes, but, I just want to 7 kind of -- as I've had this now described to me, a 8 couple of questions arise in my mind. And I'm just 9 taking this on the fly, right? 10 MR. STONE: Yes, Your Honor. 11 JUDGE HOWELL: But, you know, the first 12 question that arises is this law enforcement 13 privilege. I'm curious what a normal sort of 14 paradigmatic example of someone asserting a law 15 enforcement privilege, and both the factual scenario 16 of which it might be asserted but also who would be 17 asserting it. 18 The other question that arises in my 19 mind is to what extent that it might not be -- such 20 testimony might not be admissible in trial over such 21 a privilege, is it -- can they not solicit that 22 testimony and then, to the extent that it's 23 objectionable in terms of either using it in a filing 24 later or eventually at trial, can't that issue be 25 dealt with then?</p>
<p style="text-align: right;">135</p> <p>1 office recalled it, was what did the detention 2 facility look like. 3 And at that point I objected and 4 instructed him not to answer. And I clarified off 5 record and will clarify now that law enforcement 6 privilege is the basis for instructing him. 7 I think for him to answer questions, you 8 know, what did he visually observe at the CBP 9 detention center clearly implicates the security 10 issues and concerns the CBP would naturally have 11 about their Eagle Pass facility. 12 It also has no connection to any 13 opinions in his report. So not only does it 14 implicate the security risk, but there is simply no 15 need that Texas would reasonably have for this 16 information that would warrant overriding the 17 privilege and jeopardizing those concerns. 18 In terms of how long he was there, I 19 don't recall that actually being an additional 20 question. I think counsel told me that it ought to 21 be a question he should be able to ask. But in any 22 event, I would still say the same, that both of those 23 questions, because they relate to the visual 24 impressions of the detention center and his access to 25 it, implicate law enforcement privilege, and because</p>	<p style="text-align: right;">137</p> <p>1 So those are just a couple of questions 2 that arose in my mind. But Mr. Stone, I'll give you 3 an opportunity to respond to the argument and address 4 my questions. Mr. Link, L-I-N-K? 5 MR. STONE: Yes. 6 MR. LYNK: Yes, Brian Lynk. Yes. 7 JUDGE HOWELL: Thank you, Mr. Lynk. 8 MR. STONE: All right. Thank you, Your 9 Honor. Yes, first I wanted to clarify, there were 10 two questions. The first one was asking him to 11 describe the detention facility. This witness 12 testified that he was given a tour of the detention 13 facility. Those were his words, that he was given a 14 tour of the detention facility. 15 So our question to him was about what he 16 observed during his tour -- first was on the tour of 17 the detention facility, and the second one was how 18 long was the tour or how long was he at the detention 19 facility. And both of those drew a privilege 20 assertion and an instruction not to answer. 21 Now the quintessential example sort of a 22 law enforcement privilege being asserted is typically 23 when there is an active investigation. That's when 24 you're probably most likely encountering them, and 25 people assert the law enforcement privilege to</p>

<p style="text-align: right;">138</p> <p>1 prevent a peace officer from testifying about an 2 active ongoing investigation.</p> <p>3 In this case the privilege seems to be 4 being asserted about the conditions of the facility. 5 It's not even the conditions; just what was observed 6 while in the presence of a CBP detention facility.</p> <p>7 I don't see how this is -- it doesn't go 8 to national security. It doesn't go to any kind of 9 active investigation. We're asking about a tour that 10 he took at the CBP detention facility. And we didn't 11 get any further than that into whether or not there 12 was conversations or he relied on them. We were 13 unable to get any further into that because of the 14 privilege that was asserted.</p> <p>15 So that's where we were headed with 16 that, Your Honor, to determine whether or not there 17 was any conversations this expert relied on while CBP 18 was giving him a tour of the detention facility and 19 talking with them.</p> <p>20 MR. LYNK: Your Honor, I do not recall 21 him testifying that he was given a tour of the 22 detention facility. I believe that misstates his 23 testimony. And I think if that's the basis on which 24 Texas would seek a ruling, his answer to the record, 25 the last one that he was able to give before</p>	<p style="text-align: right;">140</p> <p>1 Your Honor, if we could just -- if we 2 were -- if you overrule their objection, if they have 3 other objections as to relevance or any of these 4 other things, those are more appropriate for trial. 5 This was only a privilege assertion at this time, and 6 I don't think that they've laid -- I don't think that 7 they've laid out an argument for why the law 8 enforcement privilege would apply to what this 9 witness observed while -- if we're not going to use 10 the word "tour," while he was brought around the CBP 11 facility -- detention facility along with how long he 12 was there at the CBP detention facility during his 13 site visit to the buoys.</p> <p>14 MR. LYNK: Two points. First, the only 15 tour I've described that the experts were taking part 16 in is the tour of the floating barrier in the river.</p> <p>17 Second, you asked earlier how did this 18 implicate the law enforcement privilege. The law 19 enforcement privilege ordinarily concerns the 20 disclosure of information that can reduce the 21 effectiveness of law enforcement techniques.</p> <p>22 Disclosing information about the visual 23 impressions of the detention facility or the nature 24 of whatever access he was given, how long he was 25 there, is certainly information that could compromise</p>
<p style="text-align: right;">139</p> <p>1 instructed, should be read back, to be clear what it 2 is that he had said. But I don't believe that's what 3 he said.</p> <p>4 I personally happen to have been on this 5 particular tour of the Eagle Pass floating barrier as 6 well at the facility, and so I will note that I also 7 personally don't recall him having been on a tour, 8 but I don't believe he testified to it in any event. 9 I don't think that's what he said.</p> <p>10 He did definitely say he was given a 11 briefing by CBP, and he testified that -- when he 12 asked -- when asked "Where were you? Where was that 13 briefing given," it was in the detention facility, 14 yes. But he did not say he was given a tour of the 15 detention facility. I do not recall that being his 16 testimony.</p> <p>17 MR. STONE: Your Honor, even Mr. Lynk, 18 in his response just now, described the trip as a 19 tour. So, you know, we might just be talking about a 20 semantic issue here as it relates to "tour."</p> <p>21 Obviously what we're trying to get at, 22 though, is the conversations that happened while he 23 was in the CBP detention facility and whether or not 24 he relied on them in forming his expert opinions. 25 And weren't able to get there.</p>	<p style="text-align: right;">141</p> <p>1 their security.</p> <p>2 I will note in fact that on that day, 3 although he was not personally aware of this, there 4 was actually internet chatter regarding threats to, 5 you know, quote-unquote, "take over the facility" 6 that day. So there is always and constantly security 7 concerns there, and I think to have him testify about 8 something, particularly when it has absolutely 9 nothing to do with his expert opinions in the case 10 here, is not warranted. It doesn't compromise the 11 privilege, and the privilege should be sustained, the 12 objection should be sustained.</p> <p>13 MR. STONE: And I'll --</p> <p>14 JUDGE HOWELL: Okay. So here -- so I'm 15 going to give you my ruling on this, and then y'all 16 can -- I think that should resolve it.</p> <p>17 With respect to the line of questioning 18 regarding his tour or observation in connection with 19 the detention facility or the buoys, how long the 20 tour was, who he spoke with, this and that, regarding 21 the government's -- the United States' assertion of 22 the law enforcement privilege here, I am overruling 23 that objection to the extent that the United States 24 is relying on it to instruct its witness not to 25 testify in the deposition.</p>

<p style="text-align: right;">142</p> <p>1 The admissibility at a later date for 2 use in some -- in connection with some filing in the 3 court or ultimately at a hearing or in trial I think 4 can be taken up with the court by the trial judge at 5 a later date. But in terms of eliciting the 6 testimony, I think the assertion and the objection, 7 my ruling on it here is sufficient and that he's not 8 -- I'm overruling the objection to the extent that it 9 is being relied on to instruct the witnesses not to 10 testify.</p> <p>11 And I guess I would further add a caveat 12 that to the extent that there are concerns about 13 having this witness testify with respect to 14 information that could affect law enforcement 15 techniques, I think any portion of this transcript 16 that might arguably fall within that can be sealed 17 and, you know, addressed in such a way that it's not 18 publicly disclosed prior to getting a court ruling on 19 that.</p> <p>20 And then to address the relevance aspect 21 of the objection, I agree that a relevance objection 22 here is not an appropriate basis to instruct a 23 witness not to testify. So I overrule that objection 24 as well to the extent that it is being relied on to 25 instruct the witness not to testify. Is there</p>	<p style="text-align: right;">144</p> <p>1 Q. So some members of the San A -- the party 2 that you traveled with from San Antonio took a tour 3 of the CBP -- CBP detention facilities? 4 MR. LYNK: I object on law enforcement 5 privilege grounds, but subject to the ruling today, 6 you can answer the question. 7 A. That is correct. 8 Q. (BY MR. STONE) Were you one of the 9 individuals who took a tour of the CBP detention 10 facilities? 11 A. I was not. 12 Q. You were sitting in the car when that 13 occurred? 14 A. That is correct. 15 Q. All right. Let's pick back up at Timmel 16 Exhibit 10, and I'm on -- page 4 is where we left 17 off. 18 Do you see under C, "When the water 19 levels in the Rio Grande change, how much do they 20 change?" Do you see that question? 21 A. I do. 22 Q. Did you already know the answer to that 23 question when you asked it? 24 A. I did not. 25 Q. Next is D, "When the water levels in the Rio</p>
<p style="text-align: right;">143</p> <p>1 anything else needed? 2 MR. STONE: No, Your Honor. Thank you. 3 MR. LYNK: Thank you, Your Honor. 4 THE WITNESS: Would this be a good time 5 to take a break? 6 MR. STONE: Yeah. We've been going -- 7 can we go off the record? 8 THE VIDEOGRAPHER: Off the record. The 9 time is 1:51. 10 (Recess 1:51 p.m. to 2:02 p.m.) 11 THE VIDEOGRAPHER: We're back on the 12 record. Time is 2:02 p.m. 13 EXAMINATION (Continued) 14 BY MR. STONE: 15 Q. (BY MR. STONE) I want to pick back up on 16 the site visit that you did back in February of 2024, 17 okay? 18 A. Yes, sir. 19 Q. After you finished briefing that you 20 received from CBP, what did you do next? 21 A. We left the briefing building and went out 22 and sat in cars while some of the members -- the 23 expert witnesses did that while some of the 24 members -- government officials did a tour of the 25 soft-sided facility.</p>	<p style="text-align: right;">145</p> <p>1 Grande change, how quickly do they change?" Do you 2 see that question? 3 A. I do. 4 Q. Did you also know the answer to that 5 question at the time that you asked it? 6 A. I did not. 7 Q. Why would that information be useful in 8 determining -- in forming your expert opinions in 9 this case? 10 A. Well, I think any instance the floating 11 marine barrier creates a hazard to navigation and 12 reduces navigable capacity, but if the change was 13 significant in height, it could even become a 14 stranding situation where somebody goes up past that 15 or in the area into in the vicinity of the barrier, 16 and if the water drops quickly and substantially 17 enough, they could -- their vessel could potentially 18 become stranded there. 19 Q. So I'm following here, you're saying that 20 the vessel could be on top of the buoys, and if the 21 water level dropped, the boat would be trapped on top 22 of the buoys? 23 A. That is correct. 24 Q. Under what scenario would a boat be on top 25 of the buoys?</p>

<p>146</p> <p>1 A. Any boat that was to go past those buoys 2 that were not aware that there's -- mooring blocks 3 were off to each side of that barrier. There are no 4 signs that say -- there's no indication anywhere 5 either in publications or charts or on the floats 6 that say, "Danger. Obstructions. Concrete blocks 7 under water." So there's nothing that says nobody 8 can go up right alongside there and tie up to it and 9 throw out a fishing line.</p> <p>10 Q. How much do the concrete blocks stick out 11 beyond where the buoys are that are floating above 12 them?</p> <p>13 A. Well, the buoys aren't floating above them. 14 The buoys are floating between two rows of the 15 concrete blocks.</p> <p>16 Q. I see.</p> <p>17 A. And they extend out approximately 10 feet to 18 either side of the -- of the floats.</p> <p>19 Q. And so as I understand it, in this scenario 20 a boat pulls up next to the buoys, they tie off next 21 to them, and they start fishing. And if there is a 22 change in the water level that -- where the water 23 level dramatically drops, then the boat could be 24 stranded on those concrete blocks. Is that accurate?</p> <p>25 A. Potentially, yes.</p>	<p>148</p> <p>1 A. That's correct.</p> <p>2 Q. So you don't consider it a -- the buoys an 3 obstruction to people who are not in boats?</p> <p>4 A. That's really -- the buoys, in terms of 5 serving as a barrier against migration of people 6 traveling without a boat, is certainly outside my 7 area of expertise. But with only a thousand foot 8 long barrier boats -- it's certainly an obstacle for 9 boats. It's certainly a hazard to navigation and, as 10 it's configured where there is that narrow end down 11 at the south end of it where at low river stage the 12 shoals are very close to the surface and then 13 oftentimes exposed, it could be become an obstruction 14 as well for boat travel.</p> <p>15 I'm not an expert on migrant moving. 16 I'm not suggesting that. I'm only talking about the 17 movement of boats.</p> <p>18 MR. STONE: Objection. Nonresponsive.</p> <p>19 Q. (BY MR. STONE) You were there in February. 20 Could you -- and you said the water level was 3 feet 21 deep right, 22 A. Yes, approximately. 23 Q. Could you have just hopped out of the 24 airboat and walked around the buoys? 25 A. Yes, in some areas.</p>
<p>147</p> <p>1 Q. Potentially, okay. The final question was, 2 "Do migrants ever use boats to cross the river? If 3 so, how frequently to comparison to crossings without 4 boats?" Do you see that on page 4 of Timmel Exhibit 5 10?</p> <p>6 A. I do.</p> <p>7 Q. Why would that be information that's 8 important in forming your experts opinions in this 9 case?</p> <p>10 A. Actually, I don't think it really is. It 11 was a curiosity. The barrier could potentially block 12 vessels pretty well, but as it's configured, I'm not 13 certain that it would block the movement of people 14 not in boats. But it really has nothing to do with 15 my -- it's more of a curiosity than anything else.</p> <p>16 Q. So you don't think the buoys would -- strike 17 that.</p> <p>18 So you don't think the buoys, as they're 19 currently configured, would obstruct a person 20 crossing the Rio Grande River that was not in a boat?</p> <p>21 A. Actually, that is either in or is not in a 22 boat. They could easily go around it.</p> <p>23 Q. Wait. All right. So just so I'm clear, can 24 the -- so people in boats or not in boats can easily 25 go around the buoys, right?</p>	<p>149</p> <p>1 Q. Did you at any point hop out of the boat and 2 walk around the buoys?</p> <p>3 A. No.</p> <p>4 Q. Why not?</p> <p>5 A. I had no interest in doing that.</p> <p>6 Q. Just didn't want to get wet, right?</p> <p>7 A. Didn't want to get my feet wet, yeah.</p> <p>8 Q. Could you have climbed over the buoys, do 9 you think?</p> <p>10 A. I think I could have. I certainly could 11 have 20 years ago and certainly could have 40 years 12 ago.</p> <p>13 Q. Do you think you could take an airboat over 14 the top of the buoys?</p> <p>15 A. No.</p> <p>16 Q. No? Next I'm showing you -- I'm still on 17 Exhibit 10, but I want to go through the answers that 18 you received, so I'm on page 2.</p> <p>19 Do you see this email sent from George 20 Cavazos?</p> <p>21 A. I do.</p> <p>22 Q. And this email was forwarded to you, 23 correct?</p> <p>24 A. Yes, it was.</p> <p>25 Q. I want to go through some of these answers.</p>

<p style="text-align: right;">150</p> <p>1 So first, as it relates to the propeller</p> <p>2 pitch on the airboats, the answer was "no," correct?</p> <p>3 A. That's -- that's what it says, yes.</p> <p>4 Q. And that was consistent the information you</p> <p>5 already knew before you asked the question, right?</p> <p>6 A. Yes.</p> <p>7 Q. Same for Reverse, the answer was "no," which</p> <p>8 was consistent with what you knew before you asked</p> <p>9 the question, right?</p> <p>10 A. Correct.</p> <p>11 Q. This next was Idle Speed. And he wrote, "At</p> <p>12 idle speed airboats will move with the current, wind</p> <p>13 speed, or drift." Do you see that answer on the</p> <p>14 screen?</p> <p>15 A. I do.</p> <p>16 Q. Was that consistent with what you knew prior</p> <p>17 to asking the question?</p> <p>18 A. Yes.</p> <p>19 Q. Next it says, as it relates to "neutral,"</p> <p>20 "There is no neutral setting, propellers are in</p> <p>21 constant motion when the engine is on." Do you see</p> <p>22 that answer?</p> <p>23 A. I do.</p> <p>24 Q. And was that consistent with what you knew</p> <p>25 prior to asking the question?</p>	<p style="text-align: right;">152</p> <p>1 factors, release rate from Lake Amistad, runoff from</p> <p>2 rains, and flash floods in the area," right?</p> <p>3 A. Yes.</p> <p>4 Q. So based on this answer, were you able to</p> <p>5 determine how many feet the water level changes in</p> <p>6 the Rio Grande area that you were asking about?</p> <p>7 A. No, not from the answer to this question.</p> <p>8 Q. The next question was, "When the water</p> <p>9 levels in the Rio Grande change, how quickly do they</p> <p>10 change?" And the answer was, "As quickly as within</p> <p>11 the hour to several days for slow or controlled water</p> <p>12 releases from Lake Amistad." Did I read that</p> <p>13 correctly?</p> <p>14 A. You did.</p> <p>15 Q. So is it fair to -- based on that answer, do</p> <p>16 you think that it would be unlikely that a person who</p> <p>17 tied their boat next to the buoys for fishing</p> <p>18 could -- the water level could change so quickly that</p> <p>19 they would be stranded on top of the buoys?</p> <p>20 A. No. I think the first part of his answer</p> <p>21 supports the fact that they could be.</p> <p>22 Q. That they could be or couldn't be?</p> <p>23 A. Could be stranded --</p> <p>24 Q. Okay. So the answer --</p> <p>25 A. -- within an hour.</p>
<p style="text-align: right;">151</p> <p>1 A. Yes.</p> <p>2 Q. Finally, as it relates to maneuverability,</p> <p>3 you said, "Do the USBP airboats" -- strike that.</p> <p>4 You said, "Are the USBP airboats as</p> <p>5 maneuverable as boats of similar size with inboard</p> <p>6 outboard motors," right?</p> <p>7 A. Yes.</p> <p>8 Q. And the answer is, "less maneuverable,"</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. And was that consistent with what you knew</p> <p>12 prior to asking the question?</p> <p>13 A. Yes.</p> <p>14 Q. Final batch here, as relates to the Change</p> <p>15 in Water Levels. The question was, "Do the water</p> <p>16 levels in the Rio Grande River change?" And George</p> <p>17 Cavazos responded "yes," right?</p> <p>18 A. Yes.</p> <p>19 Q. And then you said, "Do the water levels in</p> <p>20 the Rio Grande change frequently?" And he responded,</p> <p>21 "yes," right?</p> <p>22 A. Yes.</p> <p>23 Q. And then you asked this, "When the water</p> <p>24 levels in the Rio Grande change, how much do they</p> <p>25 change?" And the response was, "Varies on numerous</p>	<p style="text-align: right;">153</p> <p>1 Q. Okay. So because of the change in water</p> <p>2 levels, within an hour that would be sufficient for</p> <p>3 them to be stranded on top of the buoys --</p> <p>4 A. Sure.</p> <p>5 Q. -- the boat? And then the final question is</p> <p>6 "Do migrants ever use boats to cross the river? If</p> <p>7 so, how frequently in comparison to crossings without</p> <p>8 boats?"</p> <p>9 And the answers was yes -- answer was,</p> <p>10 "Yes, migrants use rafts, small boats, and makeshift</p> <p>11 rafts to cross the river. Crossing by migrants using</p> <p>12 this method is less frequent than migrants swimming</p> <p>13 or wading across the river." Did I read that</p> <p>14 accurately?</p> <p>15 A. Yes.</p> <p>16 Q. But it's fair to say you didn't rely on that</p> <p>17 in terms of your opinions in this case?</p> <p>18 A. No.</p> <p>19 Q. Final batch of emails and we'll be moving</p> <p>20 on.</p> <p>21 I'm sharing with you what I've marked as</p> <p>22 Timmel Exhibit 12.</p> <p>23 (Timmel Exhibit 12 marked.)</p> <p>24 Q. All right. This is a series of emails, and</p> <p>25 it's only three pages, Timmel Exhibit 12.</p>

<p>154</p> <p>1 Do you see on page 1 your name on the</p> <p>2 "To" link?</p> <p>3 A. I do.</p> <p>4 Q. And this email was sent from Melanie Casner,</p> <p>5 right?</p> <p>6 A. That's correct.</p> <p>7 Q. I want to start at the bottom of the thread,</p> <p>8 though, with the original email.</p> <p>9 So the email thread begins on March --</p> <p>10 I'm on page 3 of Timmel Exhibit 12. This is an email</p> <p>11 that you sent to Melanie Casner and carbon copied</p> <p>12 Brian Lynk on, right?</p> <p>13 A. Correct.</p> <p>14 Q. And the dra -- the title -- the subject</p> <p>15 matter, it says, "US v. Abbott, Draft Report USACOE</p> <p>16 data," right?</p> <p>17 A. Yes.</p> <p>18 Q. What is USACOE?</p> <p>19 A. U.S. Army Corps of Engineers.</p> <p>20 Q. And who is Melanie Casner?</p> <p>21 A. She is counsel for the U.S. Corps of</p> <p>22 Engineers.</p> <p>23 Q. In this email that you wrote to Melanie, you</p> <p>24 said, "Hello, Melanie. As per our draft review Teams</p> <p>25 meeting last night, here is the request for</p>	<p>156</p> <p>1 One of the considerations is has it ever</p> <p>2 been or could it be in the future navigable. And I</p> <p>3 was exploring, based on my experience, because I have</p> <p>4 piloted vessels and served as a ship's officer --</p> <p>5 piloted vessels on the Alafia River and the Big Bend</p> <p>6 Channel in Tampa, and both of those were very shallow</p> <p>7 areas before they were -- before they were dredged</p> <p>8 many years ago. And I've also served as a ship's</p> <p>9 officer going through San Jacinto and Texas Ship</p> <p>10 Channel -- that's Houston Ship Channel, and I know</p> <p>11 they were very shallow at one time.</p> <p>12 And what I was trying to do is compare</p> <p>13 my experience to operating on rivers that were once</p> <p>14 very shallow and now are thriving successful</p> <p>15 commercial ports.</p> <p>16 Q. I'm showing you what's been marked as Timmel</p> <p>17 Exhibit 4. We looked at it earlier. Do you recall</p> <p>18 this document when we talked about it earlier?</p> <p>19 A. Can I see the top of it, please?</p> <p>20 Q. Yeah. Your May 3rd, 2024 expert</p> <p>21 designation.</p> <p>22 A. Okay.</p> <p>23 Q. I'm on page 2 in the highlighted section,</p> <p>24 "Captain Timmel is expected to testify regarding the</p> <p>25 nature of the floating barrier system deployed in the</p>
<p>155</p> <p>1 information from the USACOE that I would like to</p> <p>2 include in my report. Please let me know if you need</p> <p>3 any additional information or clarification. Thank</p> <p>4 you, USACOE - Jax." Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. Is Jax a reference to Jacksonville?</p> <p>7 A. It is.</p> <p>8 Q. And then you said, "Shallowest pre and post</p> <p>9 dredging depths of commercial channels in:</p> <p>10 St. John's River - Jackson, Alafia River in Tampa,</p> <p>11 and Big Bend Channel in Tampa. Did I read that</p> <p>12 accurately?</p> <p>13 A. Alafia River, but, yes.</p> <p>14 Q. Alafia. And then next it says, "USACOE -</p> <p>15 Galveston: Shallowest pre and post dredging depths</p> <p>16 of commercial channels in: San Jacinta [sic] and</p> <p>17 Other Texas Channels dredged in shallow waters." Did</p> <p>18 I read that accurately?</p> <p>19 A. You did.</p> <p>20 Q. Why were you asking information about</p> <p>21 dredging depths?</p> <p>22 A. One of the things that a mariner or a</p> <p>23 riverman must do to -- before operating on a river is</p> <p>24 to know whether the body of water is a navigable</p> <p>25 river of the United States.</p>	<p>157</p> <p>1 Rio Grande River by the State of Texas and the</p> <p>2 floating barrier system's impact upon the</p> <p>3 navigability of the Rio Grande." Did I read that</p> <p>4 accurately?</p> <p>5 A. You did.</p> <p>6 Q. Okay. There's nothing in here about you</p> <p>7 being an expert on establishing navigability, is</p> <p>8 there?</p> <p>9 MR. LYNK: Object --</p> <p>10 A. No, there is not.</p> <p>11 THE REPORTER: Is --</p> <p>12 MR. LYNK: I said, "object to form."</p> <p>13 THE REPORTER: Okay. Thank you.</p> <p>14 Q. (BY MR. STONE) But when you're asking for</p> <p>15 this dredging information, you're asking for</p> <p>16 information to establish navigability. Is that</p> <p>17 accurate?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. It doesn't -- none of this</p> <p>20 information about dredging relates to your testimony</p> <p>21 today as it relates to whether or not the buoys</p> <p>22 constitute an obstruction in the Rio Grande River,</p> <p>23 does it?</p> <p>24 A. That's correct.</p> <p>25 Q. And then I see a response here on April 15th</p>

<p>158</p> <p>1 from Melanie Casner. Do you see it on the screen?</p> <p>2 I'm on page 2 of 3.</p> <p>3 A. Yes.</p> <p>4 Q. "Hi, Captain Timmel. Thanks so much for</p> <p>5 your patience. I'm going to send you seven documents</p> <p>6 pertaining to the St. John's River, Alafia River and</p> <p>7 Big Bend Channel. The documents are too big to send</p> <p>8 in one email, so I'll send three in the first email</p> <p>9 and four in second." Did I read that accurately?</p> <p>10 A. You did.</p> <p>11 Q. Okay. And then above, you responded on</p> <p>12 April 16th, 2024, to Melanie Casner and Brian Lynk.</p> <p>13 Do you see that on the screen?</p> <p>14 A. I do.</p> <p>15 Q. This is still on page 2. It says -- and</p> <p>16 just follow along -- "Good morning Melanie," blank.</p> <p>17 There appears to be a redacted portion of the e-mail</p> <p>18 here. Do you see it on the screen?</p> <p>19 A. I do.</p> <p>20 Q. What did you write in the redacted section</p> <p>21 here?</p> <p>22 A. I have no idea.</p> <p>23 Q. Do you see the second redacted paragraph?</p> <p>24 A. I do.</p> <p>25 Q. Do you remember you what wrote in the second</p>	<p>160</p> <p>1 that were mentioned in these redacted sections?</p> <p>2 A. No, I don't have that type of recall to look</p> <p>3 at one of many emails and know what I had written</p> <p>4 there at one point.</p> <p>5 Q. Moving on, it says, "Lastly, when would it</p> <p>6 be convenient for us to speak with another? I am</p> <p>7 clear most of today, except for 9:30 a.m. until 11:30</p> <p>8 a.m. and lunchtime.</p> <p>9 Did you receive my email regarding</p> <p>10 whether or not USCG 8th District ever issues Local</p> <p>11 Notice to Mariners or broadcasts notices of mariners</p> <p>12 pertaining to the upper Rio Grande River, in</p> <p>13 particular in Eagle Pass section of it? If not,</p> <p>14 where is their cutoff point on the Rio Grande River</p> <p>15 above which they do not issue notices? Thank you</p> <p>16 very much for your assistance in finding this</p> <p>17 information." Did I read that accurately?</p> <p>18 A. You did.</p> <p>19 Q. What is a local notice to mariners?</p> <p>20 A. A local notice to mariners is a document</p> <p>21 that's published weekly or more often if necessary</p> <p>22 that gives updates to professional mariners or</p> <p>23 recreational users as well about changes in a</p> <p>24 waterway that could have an impact on safe navigation</p> <p>25 or modifications or changes or improvements.</p>
<p>159</p> <p>1 redacted sentence here?</p> <p>2 MR. LYNK: I'm going to object. It was</p> <p>3 redacted and it was redacted on privacy grounds.</p> <p>4 MR. STONE: On what --</p> <p>5 MR. LYNK: Privacy grounds, privacy.</p> <p>6 MR. STONE: Privacy grounds.</p> <p>7 MR. LYNK: Yes.</p> <p>8 MR. STONE: So --</p> <p>9 MR. LYNK: Personally identifying</p> <p>10 information.</p> <p>11 MR. STONE: Oh, so both of these</p> <p>12 sentences contained personally identifying</p> <p>13 information?</p> <p>14 MR. LYNK: Yes, they did.</p> <p>15 MR. STONE: Okay. And there was nothing</p> <p>16 else contained in those redacted portions?</p> <p>17 MR. LYNK: No.</p> <p>18 MR. STONE: Okay. Let's -- well, let me</p> <p>19 finish this email, and then I'll go back.</p> <p>20 Q. (BY MR. STONE) It says personally -- it's</p> <p>21 redacted because it contained personally identifying</p> <p>22 information, i.e., somebody's address or cell phone</p> <p>23 or Social Security number, right?</p> <p>24 A. I don't recall.</p> <p>25 Q. Do you remember the names of the persons</p>	<p>161</p> <p>1 Q. And what are broadcast notices to mariners?</p> <p>2 A. Those are the same idea, but they can be</p> <p>3 done immediately if there was the -- there are a lot</p> <p>4 of broadcast notices for mariners that went out when</p> <p>5 the ship struck the bridge in Philadelphia, the</p> <p>6 container ship hit the bridge. And that's to get</p> <p>7 information out over the radio immediately so that</p> <p>8 people can receive the information more quickly.</p> <p>9 Q. I want to go back down to page 3 of</p> <p>10 Exhibit 12. What is the depth of -- the post</p> <p>11 dredging depth of the St. John's River?</p> <p>12 A. I am -- wasn't -- I did not get information</p> <p>13 on that or, when I did, she sent some information,</p> <p>14 but I determined it not to be helpful to me in this</p> <p>15 case.</p> <p>16 Q. Why wasn't it helpful to you in this case?</p> <p>17 A. Because I never -- I've maneuvered up and</p> <p>18 down the St. John's River in a -- in pleasure boats</p> <p>19 and small recreational boats, but never a commercial</p> <p>20 vessel, so I didn't feel like I had the experience</p> <p>21 necessary to have it make a significant difference.</p> <p>22 Q. What is the post dredging depth of the</p> <p>23 San Jacinto?</p> <p>24 A. I did not receive that information either.</p> <p>25 Q. What is the post dredging depth of Big Bend?</p>

<p>162</p> <p>1 A. 33 feet.</p> <p>2 Q. What is the post dredging depth of the</p> <p>3 Alafia?</p> <p>4 A. 30 feet.</p> <p>5 Q. What is the post dredging depth of the</p> <p>6 Houston Ship Channel?</p> <p>7 A. What was sent to me was not really</p> <p>8 decipherable that I felt comfortable with.</p> <p>9 Q. What depth of channel is required to make</p> <p>10 channels navigable? Let me strike that.</p> <p>11 What is the depth a channel required to</p> <p>12 make the channel a navigable water of the U.S.?</p> <p>13 A. That's not defined.</p> <p>14 Q. So it's fair to say that the examples you</p> <p>15 just gave all involved 30 or more feet --</p> <p>16 A. Yes.</p> <p>17 Q. -- that we just talked about?</p> <p>18 A. But there's a lot of navigable channels that</p> <p>19 are significantly less than that. And it depends on</p> <p>20 whether it's carrying commerce or not to a large</p> <p>21 extent.</p> <p>22 Q. Following up on your request here, were you</p> <p>23 able to review any local notices to mariners</p> <p>24 involving the Rio Grande River?</p> <p>25 A. None in the -- no, I wasn't, and there --</p>	<p>164</p> <p>1 A. It was a replica ship of the Santa Maria,</p> <p>2 and it was about 60 feet long and came into Tampa,</p> <p>3 and I piloted that.</p> <p>4 I also piloted the -- I guess I have an</p> <p>5 affinity for these type of things -- when not-for-</p> <p>6 profit companies bring vessels into -- at least into</p> <p>7 Tampa Bay, we do the piloting pro bono whenever we</p> <p>8 can. And I always sort of like that kind of stuff,</p> <p>9 so I did the Santa Maria. I did the Golden Hind,</p> <p>10 which was Sir Francis Drake's vessel. Did the</p> <p>11 America, the original sailing vessel for the</p> <p>12 America's Cup, and then also a number of private</p> <p>13 yachts and research vessels, small tugboats.</p> <p>14 Q. So the Santa Maria, the smallest commercial</p> <p>15 vehicle that you've -- sorry -- smallest commercial</p> <p>16 vessel that you've piloted. What was the draft on</p> <p>17 that vessel?</p> <p>18 A. I don't recall exactly. This was a number</p> <p>19 of years ago. I'm sorry, I don't recall.</p> <p>20 Q. Did it have any cargo in it at the time that</p> <p>21 you piloted it?</p> <p>22 A. Not commercial cargo, no. It had crew</p> <p>23 members and passengers on board.</p> <p>24 Q. And this was the historic vessel or is -- if</p> <p>25 I search for the word "Santa Maria," is that the</p>
<p>163</p> <p>1 the ones I was requesting, so the only ones that were</p> <p>2 responded to, was up in the Eagle Pass area.</p> <p>3 Q. Did you review any broadcast notices to</p> <p>4 mariners involving the Rio Grande River?</p> <p>5 A. No.</p> <p>6 Q. What is the minimum depth that you would</p> <p>7 require to pilot a commercial vessel?</p> <p>8 A. It depends on the size and type of vessel.</p> <p>9 There's no real answer to that.</p> <p>10 Q. With is the smallest commercial vessel that</p> <p>11 you can pilot?</p> <p>12 A. Well, there's a lot of ferryboats and a lot</p> <p>13 of charter boats and fishing boats and things like</p> <p>14 that that can be quite small, and they're all</p> <p>15 commercial vessels. And they can have two or three</p> <p>16 feet of draft. Some of the multi-hull vessels have</p> <p>17 even less draft than that.</p> <p>18 So it's not a function of the draft of</p> <p>19 the vessel or the depth of the water that makes the</p> <p>20 channel navigable or not.</p> <p>21 Q. What is the smallest commercial vessel that</p> <p>22 you have personally piloted?</p> <p>23 A. The Santa Maria.</p> <p>24 Q. And what was the size -- what was -- tell by</p> <p>25 the Santa Maria.</p>	<p>165</p> <p>1 proper name of the vessel itself?</p> <p>2 A. Yes. It was a replica ship.</p> <p>3 Q. Replica.</p> <p>4 A. Uh-huh.</p> <p>5 Q. And did you testify a minute ago that it was</p> <p>6 approximately 98 feet long?</p> <p>7 A. No. I thought it was more in the vicinity</p> <p>8 of 60 feet.</p> <p>9 Q. Okay.</p> <p>10 A. If that. What's really shocking is when you</p> <p>11 get aboard these replica vessels that are actual size</p> <p>12 and to see how small they were and how many people</p> <p>13 were on board. And these people went out to sea when</p> <p>14 they thought the earth was flat.</p> <p>15 Q. Would it -- if I represented to you that the</p> <p>16 Santa Maria requires a 10-foot draft or has a 10-foot</p> <p>17 draft, would that sound reasonable?</p> <p>18 A. That would surprise me that it's that deep.</p> <p>19 I didn't want to guess, but I was thinking more in</p> <p>20 the neighborhood of 7 or 8 feet.</p> <p>21 Q. Now I want to talk about your second trip</p> <p>22 down to the site of the buoys, okay?</p> <p>23 A. Yes.</p> <p>24 Q. When did you most recently travel down to</p> <p>25 visit the buoys?</p>

<p>166</p> <p>1 A. I went down day before yesterday, but just 2 checked into a hotel after arrival. Well, got dinner 3 and then went -- checked into the hotel, went to 4 dinner -- I forget the order. But anyway, and then 5 yesterday actually did the site inspection. 6 Q. So you flew in on Monday, June 3rd? 7 A. To Austin, yes. 8 Q. To Austin. And you checked into a hotel? 9 A. Not in Austin. I checked into the Hampton 10 Inn in Eagle Pass. We drove that day. 11 Q. I see. So you flew into Austin on Monday, 12 June 3rd, and then drove down directly to Eagle Pass. 13 Is that right? 14 A. I was picked up at the airport, and we went 15 directly to Eagle Pass. 16 Q. Who picked you up? 17 A. Landon Wade. 18 Q. Approximately how long did it take to drive 19 to Eagle Pass? 20 A. Three and a half hours or so. 21 Q. Other than Landon Wade, who else was present 22 during the drive to Eagle Pass? 23 A. A gentleman with the Corps of Engineers from 24 Kansas City. 25 Q. Do you remember what this gentleman's name</p>	<p>168</p> <p>1 correct? 2 A. That is correct. 3 Q. What time -- did you leave from the hotel? 4 A. We did. 5 Q. Who all was present when you left the hotel 6 to go visit the site of the buoys? 7 A. Landon Wade and Mike Chapman. 8 Q. And -- strike that. 9 Approximately what time did you arrive 10 at the site of the -- well, strike that. 11 Approximately what time did you leave 12 the hotel? 13 A. Approximately 8:40. 14 Q. And where did you go after you left the 15 hotel? 16 A. Stopped by a gas station to buy some bottled 17 water and then went to a CBP office. 18 Q. CBP office in Eagle Pass? 19 A. Correct. 20 Q. What happened when you arrived at the CBP 21 office in Eagle Pass? 22 A. We were taken into a conference room and 23 given a very short briefing, and then went to the 24 boat ramp to board the vessels. 25 Q. Who gave you the briefing?</p>
<p>167</p> <p>1 was? 2 A. Yes. Mike Chapman. 3 Q. And did you obtain any information from Mike 4 Chapman that you relied on in forming your opinions 5 in this case? 6 A. No. 7 Q. Did Mike Chapman provide you with any facts 8 that you relied on in forming your opinions in this 9 case? 10 A. No. 11 Q. So other than Landon and Mike Chapman, was 12 anyone else present in the vehicle when you drove to 13 Eagle Pass? 14 A. No. 15 Q. So you arrived in Eagle Pass on Monday, 16 June 3rd, and you checked into a hotel, right? 17 A. That's correct. 18 Q. Did you have any other meetings that day 19 related to this case? 20 A. No. 21 Q. On -- what happened on -- strike that. 22 So on Tuesday, June 4th, yesterday 23 morning -- 24 A. Yes. 25 Q. -- at some point you visited the site again,</p>	<p>169</p> <p>1 A. I don't recall his name, but I met him -- it 2 could have been the same person that gave us the 3 briefing in the previous, but I -- I don't recall his 4 name. 5 Q. Was it George Cavazos? 6 A. I don't recall. 7 Q. Would you recognize George Cavazos if you 8 saw him? 9 A. Yes. 10 Q. Approximately how long was the briefing? 11 A. 10, 15 minutes. 12 Q. And what was the briefing about? 13 A. Mostly about the stage of the river, the 14 height of the river, and what we wanted to see. 15 Q. What was the height of the river? 16 A. It was lower than the time I went before, 17 but higher than it had been when some other people 18 went to see it a few weeks ago. 19 Q. What other people -- what people went and 20 saw it -- strike that. 21 Who went and saw it a few weeks ago? 22 A. I know that Melanie Casner did, but I don't 23 know anybody else that was on that trip. 24 Q. Was it a PowerPoint presentation? 25 A. No.</p>

<p style="text-align: right;">170</p> <p>1 Q. Were there any documents that you were 2 provided during the presentation? 3 A. No. 4 Q. Did you rely on any of the information you 5 were provided during the presentation in forming your 6 expert opinions in this case? 7 A. No. 8 Q. And you said that it was lower than last 9 time, but higher than a few weeks ago. Do you have 10 an actual foot depth that you can recall? 11 A. I do not, no. And it would depend on 12 where -- in terms of -- the stage of the river is one 13 thing, and it's taken at the gage points, and it 14 doesn't really mean a great deal to me, but it did to 15 the person from the Corps. 16 And what's more important to me is the 17 depth of the water. In this case at the barrier, and 18 that varies along the length of the barrier. 19 Q. The last time you visited in February it was 20 three feet deep approximately, you testified. Do you 21 recall that? 22 A. Yes. 23 Q. And how many feet deep was it -- well, it 24 was less than three, but how many feet approximately 25 was it yesterday when you visited?</p>	<p style="text-align: right;">172</p> <p>1 boat, and we were not able to travel around it. The 2 operator of the boat said that it was his opinion 3 that we would run aground if we went on the other 4 side. And the jet boat has a jet that hangs down 5 below the hull of the boat, and that he could very 6 potentially damage that if we tried to go on the 7 other side. 8 So about halfway through the inspection, 9 I asked somebody if it would be possible to swap 10 boats for me to go over because I wanted to see the 11 other side because that's where the -- what I think 12 is most significant in terms of hazards to navigation 13 and reduction of navigable capacity. 14 And so I went onto the airboat, and then 15 we were able to go through to the other side. 16 Q. So on an airboat you were able to go arou -- 17 circle the buoys? 18 A. That's correct. But the riverine boat only 19 had a foot and a half of draft, and he was 20 uncomfortable with taking it over there. 21 Q. Because of the water depth, right? 22 A. Correct. And the narrowness at the south 23 end. 24 Q. How many people were with you when you 25 did the -- when you did the site inspection on a</p>
<p style="text-align: right;">171</p> <p>1 A. Well, there -- the shoals were exposed. A 2 number of floats were sitting on land above the 3 height of the river. And so at some places it was 4 zero or less than zero. And then at the south end of 5 it the gentleman from the Corps got out a boat hook 6 and put it over the side. And in the area that we 7 were at, the south end, is about 3 1/2 feet. 8 Q. So it varied from, it sounds like, 3 1/2 9 feet to less than zero feet? 10 A. I would say negative 8 to 12 inches. 11 Q. Negative 8 to 12 inches. Were you able -- 12 when you did the site visit yesterday, were you able 13 by airboat to go up and down the Rio Grande River 14 aroun -- beside the buoys? 15 A. I'm sorry? 16 Q. Yeah. Yesterday when you did the -- 17 A. Uh-huh. 18 Q. -- site visit, did you travel up the river 19 past the buoys? 20 A. Yes. 21 Q. And did you travel down the river past the 22 buoys? 23 A. Yes. 24 Q. Were you able to travel around the buoys? 25 A. Originally I was in the RVSD vessel, the jet</p>	<p style="text-align: right;">173</p> <p>1 boat -- on the boat yesterday? 2 A. There -- originally there was four of us, 3 and we split up two on the RVSD and two on the 4 airboat. 5 Q. And who were the four people? 6 A. The four people was Mike Chapman, Landon 7 Wade, and David Sorola, and myself. And then two 8 people on each boat, the operator and the assistant. 9 Q. How many people were on the airboat with you 10 that you were able to circle the buoys in? 11 A. Five, total of five. I just went onto the 12 airboat and nobody left it. 13 Q. Were you also wearing headsets when you were 14 in the -- let me start this -- were you wearing 15 headsets when you were on the airboat? 16 A. Yes, but they -- it was not connected to the 17 airboat, and I was wearing it strictly for sound 18 protection, for hearing protection. 19 Q. So during that portion of the trip you 20 weren't able to converse with anybody? 21 A. That's correct. 22 Q. When you were on the RVSD, how many people 23 were aboard the RVSD with you when you were on that 24 boat? 25 A. A total of four.</p>

<p style="text-align: right;">174</p> <p>1 Q. Four people. And just so I'm clear, who 2 were those four people again? 3 A. It was the operator, his assistant, Mike 4 Chapman, and myself. 5 Q. And was the operator -- the operator of the 6 boat, was he a lawyer? 7 A. No. 8 Q. Okay. What did you -- did you talk about 9 the case while you were on that boat? 10 A. No. 11 Q. You didn't discuss the case at all while you 12 were on the RVSD? 13 A. I didn't talk about the case at all, no. 14 Q. What did you talk about while you were on 15 the RVSD? 16 A. I asked them if they liked their job, and 17 they said, "Driving a boat all day, what's not to 18 like?" I talked about the training they had to go 19 through so that they know the river well enough. I 20 talked to them quite a bit about which areas within 21 the barrier, the vicinity of the barrier, what the 22 depths were there, what the currents were. Talked 23 about when the height of the river changes, how 24 quickly -- how quickly it can change. And he said in 25 some instances, it can -- you can sit someplace on</p>	<p style="text-align: right;">176</p> <p>1 halfway. So it depends on the depth of the river. 2 Yesterday he was able to maneuver around 3 it. Those guys are really good handlers and -- well, 4 I guess if you spend all day going up and down a 5 stretch of water, you learn it pretty well. 6 Q. All right. Did the operator -- did you 7 discuss with the operator whether or not he takes any 8 boats out in that area at night? 9 A. Not specifically, but I did ask him -- he 10 pointed out, because I asked if there's many 11 crossings and night, and pointed out a tower that had 12 very sophisticated cameras on it and had night vision 13 cameras and heat -- infrared cameras. And they also 14 use drones quite a bit with sophisticated cameras on 15 it as well. 16 And then if something is spotted, then 17 they respond to it. I don't know that they're making 18 patrols up and -- I didn't ask, and he didn't state 19 whether they're actually doing patrols on the -- it 20 would be extremely -- I don't know that they could do 21 that, though -- 22 Q. Did you -- 23 A. It would be dangerous. 24 Q. Yeah. At any point did -- at any point 25 during either site visit or during your course of</p>
<p style="text-align: right;">175</p> <p>1 the edge of the river and watch it rise or fall. 2 I asked if it's ever like a tidal wave 3 coming down the river when they let go of the water, 4 and he goes, "No." I asked what happens if they 5 cause damage to one of the boats, and they said that 6 can be a -- that an investigation takes place, and it 7 could have consequences if there was negligence. 8 We went past some boys on the side of 9 the river, and he said to me, "They're getting ready 10 to cross." So I found that to be interesting. 11 He talked -- volunteered a lot about how 12 many drownings take place, you know, over time there. 13 He talked about how much money is made on the Mexican 14 side of bringing these people here and how little 15 money they -- CBP has, things of that nature. 16 Q. And I have a couple follow-ups to that 17 conversation. But first I just wanted to ask, how 18 did the airboat that you were in when you were going 19 around the buoys get over the shoals? Did it just 20 drive over them? 21 A. No, he was able to -- he was able to avoid 22 them, having, I guess, a lot of experience and 23 knowledge there. But the river was certainly higher 24 than it sometimes is because I've seen photographs of 25 it where the blocks are exposed perhaps as much as</p>	<p style="text-align: right;">177</p> <p>1 gathering information for this case, have you become 2 aware at any point of the U.S. border patrol 3 operating craft in the location where the buoys are 4 located at night? 5 A. I did not ask and was not told. 6 Q. When you said that it would dangerous, did 7 you mean because of the crime? 8 A. No, I meant strictly from a navigational 9 perspective that these guys can really read the 10 river, and as we're going up and down, he's pointing 11 out rocks that you can't see because they're below 12 the surface, but there is a slight ripple or 13 there's -- or you can see a divergence of the current 14 someplace. And then we went to -- when went south of 15 the boat ramp, there were rapids, you know, a lot of 16 rapids. 17 Actually, was it south or north? I get 18 confused on that, but there were some areas in the 19 Eagle Pass area where in certain sections of the 20 river it was quite rocky and quite shallow. And -- 21 Q. Did you -- 22 A. -- by "dangerous," you wouldn't be able to 23 see those visual cues at night. And there are no 24 navigational buoys or aids there, so I don't know how 25 you would know where you were in relation to the</p>

<p style="text-align: right;">178</p> <p>1 shoal areas and other dangers.</p> <p>2 Q. So it's fair to say that it's your belief in</p> <p>3 this case that the USCBP is not operating crafts in</p> <p>4 the location where the buoys are at night?</p> <p>5 MR. LYNK: Object to form.</p> <p>6 A. I have no knowledge of that one way or</p> <p>7 another. Unless they've got some navigation</p> <p>8 instrumentation that I'm unaware of, I don't know how</p> <p>9 they could do it safely. I wouldn't do it.</p> <p>10 Q. (BY MR. STONE) You wouldn't do it. Would</p> <p>11 you do it if the buoys weren't there?</p> <p>12 A. No.</p> <p>13 Q. You wouldn't operate a craft there at night</p> <p>14 regardless of the buoys, right?</p> <p>15 A. Not unless it was -- they installed</p> <p>16 navigational buoys and they were lit and it was a</p> <p>17 well marked path.</p> <p>18 Q. You mentioned drownings, right?</p> <p>19 A. Yes.</p> <p>20 Q. Were you told of any drownings that occurred</p> <p>21 at the location where the buoys are?</p> <p>22 A. I was told that there was a body recovered</p> <p>23 from the barrier, but it did not appear that it --</p> <p>24 the drowning occurred there it. It appeared that it</p> <p>25 had occurred further upriver and had drifted down</p>	<p style="text-align: right;">180</p> <p>1 at the location exactly where the buoys are?</p> <p>2 MR. LYNK: Object to form.</p> <p>3 A. No.</p> <p>4 Q. (BY MR. STONE) Did the operator say</p> <p>5 anything about people climbing over the buoys?</p> <p>6 A. No.</p> <p>7 Q. Swimming under the buoys?</p> <p>8 A. No.</p> <p>9 Q. Earlier you testified that it would be</p> <p>10 possible, when you were there on the February visit,</p> <p>11 that you could have hopped out of the boat and just</p> <p>12 walked around the buoys if you wanted. Do you recall</p> <p>13 that?</p> <p>14 A. Yes.</p> <p>15 Q. Was the same true yesterday?</p> <p>16 A. Yes.</p> <p>17 Q. Did you hop out of the boat and walk around</p> <p>18 the buoys?</p> <p>19 A. I did not.</p> <p>20 Q. Okay.</p> <p>21 A. I felt like it. It was 106.</p> <p>22 Q. Was there anything else that you discussed</p> <p>23 with the RVSD operator during the course of your site</p> <p>24 visit yesterday that you relied on or that's relevant</p> <p>25 to your opinions in this case?</p>
<p style="text-align: right;">179</p> <p>1 into the barrier and got stuck.</p> <p>2 Q. And who gave you that information?</p> <p>3 A. One of the boat operators. I don't remember</p> <p>4 whether it was on the RVSD or the airboat.</p> <p>5 Q. Had there been any drownings that -- strike</p> <p>6 that.</p> <p>7 So they recovered the body, but had</p> <p>8 anyone actually drowned at the location where the</p> <p>9 buoys were located that you're aware of?</p> <p>10 A. Not that I'm aware of.</p> <p>11 Q. You mentioned that there were some boys that</p> <p>12 you observed on the Mexican side of the bank. Is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And you said one of the operators told you</p> <p>16 they were getting ready to cross?</p> <p>17 A. That was his opinion. That's what he said,</p> <p>18 yes.</p> <p>19 Q. Did he say if they were going to cross where</p> <p>20 the buoys were located?</p> <p>21 A. No, it was not in the vicinity of the buoys.</p> <p>22 Q. Is that because of the buoys?</p> <p>23 A. He did not say.</p> <p>24 Q. Did the operator tell -- make any statements</p> <p>25 about the number of people who have illegally crossed</p>	<p style="text-align: right;">181</p> <p>1 A. No.</p> <p>2 Q. Approximately how long was the site visit</p> <p>3 yesterday to the buoys?</p> <p>4 A. I think we arrived at the boats probably</p> <p>5 about 9:30 and was onboard until 11:45, so a little</p> <p>6 over two hours.</p> <p>7 Q. Was that entire two hours spent traveling to</p> <p>8 the site of the buoys, around the buoys, and then</p> <p>9 returning?</p> <p>10 A. Well, I had an extended tour. We got back</p> <p>11 down to the boat ramp, and Mike Chapman from the</p> <p>12 Corps wanted to go beyond the boat ramp to -- and</p> <p>13 that's where we were able to see some of the natural</p> <p>14 rock formations and so forth. So we probably went</p> <p>15 two miles that direction and then returned.</p> <p>16 Q. Two miles further south?</p> <p>17 A. Yes. Again, if I'm not confusing north and</p> <p>18 south.</p> <p>19 Q. And what were the -- can you describe the</p> <p>20 condition of those rapids? Well, strike that.</p> <p>21 Could you take -- strike that.</p> <p>22 You were in the RVSD at this time,</p> <p>23 right?</p> <p>24 A. That's correct.</p> <p>25 Q. Could you take the RVSD over those rapids?</p>

<p style="text-align: right;">182</p> <p>1 A. No. You would avoid those rapids, as we 2 did. 3 Q. Was there a way to continue to travel down 4 the Rio Grande River past those rapids by -- in the 5 RVSD? 6 A. Yes. 7 Q. So the rapids weren't the entire width of 8 the river. They were only a portion of the river? 9 A. They were isolated sections. 10 Q. Isolated sections. Did you travel down to 11 Kingsbury Falls? 12 A. No, but that's an interesting question 13 because we had heard that that question had been 14 asked before, so we wanted to go see it, if it was 15 possible. And nobody that we talked to is aware of 16 where Kingsbury Falls is. And I Googled it, and we 17 couldn't -- nobody -- nobody is aware. It's a 18 mystery falls. 19 Q. Really? 20 A. Yep. 21 Q. So are the boat -- so the boat operators 22 didn't know where Kingsbury Fall was -- 23 A. Nope. 24 Q. -- Falls was? And no one you spoke to 25 yesterday was familiar with where Kingsbury Falls is?</p>	<p style="text-align: right;">184</p> <p>1 long day -- your expert report. And I just want to 2 start at the beginning, page 1. Starboard Ten, 3 Incorporated. Do you see that on the screen? 4 A. I do. 5 Q. So what is Starboard Ten, Incorporated? 6 A. That is the name of my company through which 7 I perform my harbor pilot duties and then developed 8 an expert witness services company, and I do that 9 business through Starboard Ten Incorporated as well. 10 MR. LYNK: Hey, just a quick question. 11 It's almost 3. Are you planning to go through a long 12 stretch of the report before another break? 13 MR. STONE: We can take another 14 five-minute break. That's fine. 15 THE VIDEOGRAPHER: Off the record. Time 16 is 2:57. 17 (Recess 2:57 p.m. to 3:08 p.m.) 18 THE VIDEOGRAPHER: We're back on the 19 record. Time is 3:08. 20 Q. (BY MR. STONE) So right now we are in what 21 we've marked as Timmel Exhibit 1. This is a copy of 22 your expert report, and I've got it up on the screen. 23 Do you see -- I'm on page 3. Do you see 24 it on the screen? 25 A. I do.</p>
<p style="text-align: right;">183</p> <p>1 A. That is correct, nobody was aware of it. 2 They'd never heard of it. 3 Q. And you tried Googling it, and you 4 weren't -- well, let me start there. Did you try 5 Googling it? 6 A. I did. 7 Q. And were you able to find Kingsbury Falls on 8 Google? 9 A. I was able to find Kingsbury, Texas but not 10 Kingsbury Falls. Could you tell me where it is? 11 Q. Well, we will -- we'll -- the question 12 format of a deposition -- 13 A. I know. 14 Q. -- I'll ask the questions -- 15 A. Excuse me. I'm sorry. 16 Q. -- but I -- it may not be the last time we 17 talk about Kingsbury Falls. We'll see. 18 A. Okay. 19 Q. So I want to talk a bit about your 20 deposition. Let me show you what I've marked as 21 Timmel Exhibit No. 1. 22 A. About my report? 23 Q. I'm sorry, your report. We're in the 24 deposition, so I apologize. 25 Let me ask you about your -- it's been a</p>	<p style="text-align: right;">185</p> <p>1 Q. I'm on the second paragraph from the top 2 beginning with, "The analysis and opinions." Do you 3 see that paragraph? 4 A. Yes, uh-huh. 5 Q. The second sentence of that paragraph -- let 6 me read it for you. Let me see if I can highlight 7 it. It's going to do a scan. 8 Okay. Let me cut to the gist. In that 9 sentence -- you have it, I believe, in front of you 10 if you want to go to page 3 of your expert report, 11 the second paragraph -- second sentence of the second 12 paragraph you mention consulting with your peers and 13 other experts in this case and that you relied on 14 those conversations in forming your opinions. 15 Tell me if I'm -- my recollection is 16 accurate after you've reviewed your expert report. 17 A. No, you're -- that's a misrepresentation. 18 Q. Okay. What does it say in that sentence 19 about your peers? 20 A. What it says is after -- well, I'll read it. 21 "Additional facts, data, and knowledge gleaned from 22 websites, consultation with peers, and other experts, 23 and from extensive research conducted during the 24 preparation of this report were also considered." 25 Q. And how did my question misrepresent that</p>

<p style="text-align: right;">186</p> <p>1 sentence then?</p> <p>2 A. You said "other experts in this case." And</p> <p>3 these experts I conferred with were not in this case.</p> <p>4 Q. Okay. You're going to have to help me a</p> <p>5 little bit. But before we get to that, let's start</p> <p>6 with peers.</p> <p>7 A. Sure.</p> <p>8 Q. What -- and let me -- now that I've made</p> <p>9 this a searchable document, I can highlight it.</p> <p>10 All right. What peers did you</p> <p>11 consultate -- did you consult with in this case?</p> <p>12 A. I spoke with another pilot from Philadelphia</p> <p>13 who also does expert witness work. In fact, I had</p> <p>14 him do a peer review of my report and asked him if</p> <p>15 I -- not necessarily if he agreed with all of the</p> <p>16 opinions, but if he agreed with the methodology and</p> <p>17 the approach taken.</p> <p>18 And I also spoke with my son, who is</p> <p>19 also a harbor pilot, and talked to him about, you</p> <p>20 know, hazards to navigation and things like that.</p> <p>21 Q. Other than those two individuals, did you</p> <p>22 talk with any other peers or did you -- strike that.</p> <p>23 Other than the two individuals that you</p> <p>24 just identified, did you consult with any other peers</p> <p>25 about this case?</p>	<p style="text-align: right;">188</p> <p>1 A. That's correct. He looked at this version</p> <p>2 of the report.</p> <p>3 Q. Approximately when did Steve Richter look at</p> <p>4 this version of your report?</p> <p>5 A. Last week.</p> <p>6 Q. So Steve Richter looked at the -- your</p> <p>7 expert report after you wrote it and produced it to</p> <p>8 us?</p> <p>9 A. Correct.</p> <p>10 Q. So it wasn't an actual draft of your report</p> <p>11 that he looked at?</p> <p>12 A. That's correct.</p> <p>13 Q. So this report was produced on May 9th of</p> <p>14 2024, right?</p> <p>15 A. Yes.</p> <p>16 Q. At the time that you wrote this report that</p> <p>17 was published, had you consulted with Steve Richter</p> <p>18 about this case?</p> <p>19 A. Not with Steve Richter, no.</p> <p>20 Q. Prior to May 9th, 2024, what peers did you</p> <p>21 consult with about this case?</p> <p>22 A. I spoke to my son about it.</p> <p>23 Q. And when did you speak with your son about</p> <p>24 this case?</p> <p>25 A. Shortly after I was retained.</p>
<p style="text-align: right;">187</p> <p>1 A. No.</p> <p>2 Q. Who is the peer that you consulted with from</p> <p>3 Philadelphia?</p> <p>4 A. His name is Steve Richter, R-I-C-H-T-E-R.</p> <p>5 Q. Can you spell that last name one more time?</p> <p>6 A. R-I-C-H-T-E-R.</p> <p>7 Q. T-E-R. And who is Steve Richter?</p> <p>8 A. He is a classmate and shipmate of mine from</p> <p>9 when I was in New York Maritime College, and we both</p> <p>10 graduated in 1981. And he has served as a ship's</p> <p>11 officer, a master, and a ship's pilot for many, many</p> <p>12 years now. And he also does expert witness work.</p> <p>13 Q. Was he retained as an expert in this case?</p> <p>14 A. No.</p> <p>15 Q. Did you share a copy -- strike that.</p> <p>16 Did you share a draft of your expert</p> <p>17 report with him to review?</p> <p>18 A. I had him look at it, yes.</p> <p>19 Q. Do you know if the copy of the draft that</p> <p>20 you shared with Mr. Richter was shared with us</p> <p>21 attorneys for the State of Texas in this case?</p> <p>22 A. It's the same -- it's the same report.</p> <p>23 Q. So there was no changes between that draft</p> <p>24 that you shared with Mr. Richter and the final</p> <p>25 version that was provided to us here today?</p>	<p style="text-align: right;">189</p> <p>1 Q. Approximately how long was -- approximately</p> <p>2 how many conversations did you have with your son</p> <p>3 about this case?</p> <p>4 A. Oh, half a dozen or so.</p> <p>5 Q. What was the longest conversation that you</p> <p>6 had with your son about this case?</p> <p>7 A. Five or ten minutes.</p> <p>8 Q. So is it fair to say that the conversations</p> <p>9 were about -- the half dozen conversations with you</p> <p>10 had -- conversations you had with your son about this</p> <p>11 case were relatively short?</p> <p>12 A. Yes.</p> <p>13 Q. Did you meet with any attorneys in</p> <p>14 preparation for your deposition testimony today?</p> <p>15 A. Yes.</p> <p>16 Q. How many times did you meet with attorneys</p> <p>17 in preparation for your deposition testimony today?</p> <p>18 A. One time.</p> <p>19 Q. And when was that time?</p> <p>20 A. Last week.</p> <p>21 Q. What day last week?</p> <p>22 A. I think Thursday, but I'm not certain.</p> <p>23 Q. And how long was the meeting with the</p> <p>24 attorneys in preparation for this deposition today?</p> <p>25 A. Maybe an hour or so, hour an a half.</p>

<p style="text-align: right;">190</p> <p>1 Q. So -- okay. Excellent. Thank you.</p> <p>2 Let me go back to -- to the</p> <p>3 consulting -- to the consultation with peers. What</p> <p>4 did your son say about your opinions in this case?</p> <p>5 A. I asked him if he thought the barrier</p> <p>6 presented a hazard to navigation along the concrete</p> <p>7 blocks and if he thought it would diminish navigable</p> <p>8 capacity.</p> <p>9 Q. And what did he say?</p> <p>10 A. He said yes in both -- to both questions.</p> <p>11 Q. Has your son ever been to the location of</p> <p>12 the buoys?</p> <p>13 A. No.</p> <p>14 Q. What was he basing his opinion on --</p> <p>15 A. Photographs --</p> <p>16 Q. -- if you know?</p> <p>17 A. -- and my conversation.</p> <p>18 Q. You also list "other experts." What other</p> <p>19 experts did you obtain facts, data, and knowledge</p> <p>20 from in this case?</p> <p>21 A. Repeat your question, please.</p> <p>22 Q. Sure. I'm asking what facts, data, or</p> <p>23 knowledge did you glean from other experts in this</p> <p>24 case.</p> <p>25 MR. LYNK: Object to form.</p>	<p style="text-align: right;">192</p> <p>1 seven questions that are posed here. Do you see them</p> <p>2 on the screen?</p> <p>3 A. I do.</p> <p>4 Q. It says, "This report" -- and I'm reading</p> <p>5 from page -- this is page 3, I believe, of your</p> <p>6 report under Scope of Report. "This report strives</p> <p>7 to provide answers to the following questions from a</p> <p>8 professional mariner's and/or recreational boater's</p> <p>9 perspective to help establish the standard of care."</p> <p>10 Did I read that correctly?</p> <p>11 A. You did.</p> <p>12 Q. Okay. So I want to bifurcate those two</p> <p>13 different things. When you're testifying in this</p> <p>14 case as an expert, are you testifying as a</p> <p>15 professional mariner or as a recreational boater?</p> <p>16 A. Both.</p> <p>17 Q. So the opinions that you're offering in this</p> <p>18 case, are they -- are they intertwined, the</p> <p>19 professional mariner and recreational boater?</p> <p>20 A. Yes. My opinions apply in both cases.</p> <p>21 Q. Do the answers to any of the questions --</p> <p>22 strike that.</p> <p>23 Are the answers the same -- strike that.</p> <p>24 Are your expert opinions the same in</p> <p>25 this case both as a professional mariner and as a</p>
<p style="text-align: right;">191</p> <p>1 A. From other experts, none.</p> <p>2 Q. (BY MR. STONE) Who are the other experts</p> <p>3 that you're talking about in this sentence?</p> <p>4 A. It would have been Steve Richter.</p> <p>5 Q. But you didn't talk to Steve Richter until</p> <p>6 after you wrote this report, right?</p> <p>7 A. That's true, yes.</p> <p>8 Q. So then what other -- you couldn't have</p> <p>9 known that at the time you wrote the report, right?</p> <p>10 A. That's true.</p> <p>11 Q. So who are the other experts then -- it's</p> <p>12 plural -- other experts then that you're talking</p> <p>13 about in this sentence?</p> <p>14 A. That's a misstatement.</p> <p>15 Q. Not my question. My question is not a</p> <p>16 misstatement, right?</p> <p>17 A. Correct.</p> <p>18 Q. Okay. The sentence a misstatement in the</p> <p>19 expert report?</p> <p>20 A. That's right.</p> <p>21 Q. Okay.</p> <p>22 A. Well, the -- that -- that it was done prior</p> <p>23 to the writing of the report.</p> <p>24 Q. Okay. Next I want to go on to the next</p> <p>25 section, which is Scope of Report. And there are</p>	<p style="text-align: right;">193</p> <p>1 recreational boater?</p> <p>2 A. Well, there are certain opinions that apply</p> <p>3 only to a professional mariner such as having to</p> <p>4 determine if a body of water is navigable water in</p> <p>5 the U.S. or not. But the fact that it's a navigation</p> <p>6 hazard is applicable in both -- in both scenarios.</p> <p>7 Q. So is it fair to say that the only opinion</p> <p>8 that's distinguishable between being a professional</p> <p>9 mariner and a recreational boater in this case is the</p> <p>10 determination that you talk about, which we'll get to</p> <p>11 in a minute, about navigability of the water?</p> <p>12 A. I believe the barriers also decrease the</p> <p>13 navigable capacity for recreation boats in that area</p> <p>14 as well. So I would say those two topics, those two</p> <p>15 subjects.</p> <p>16 Q. Also are divergent. Let me strike that.</p> <p>17 I think we're just going to have to go</p> <p>18 through, and I'll have to ask you each time --</p> <p>19 A. Okay.</p> <p>20 Q. -- "Is this a professional mariner opinion</p> <p>21 or is this a recreational boater?" I think that's</p> <p>22 going to be the easiest.</p> <p>23 A. Okay.</p> <p>24 Q. Okay? Let's start with the first question</p> <p>25 here. "How does a professional mariner determine if</p>

<p>194</p> <p>1 a body of water that he or she is or is planning to 2 operate upon is classified as a navigable water and 3 with which rules they must comply?" Did I read that 4 correctly? 5 A. You did. 6 Q. Did you write that question? 7 A. Yes. 8 Q. Were you asked in this case to answer that 9 question? 10 A. No, I was asked to evaluate the impact, if 11 any, of the floating marine barrier on navigation and 12 the navigable capacity of the river. 13 Q. How many times have you testified in the 14 past about whether or not a water is a navigable 15 water? 16 A. I've testified numerous times about whether 17 a body water is subject to the inland rules of the 18 United States, and in order for them to be so, it 19 would have to be designated as a navigable water of 20 the United States or the state in which it was 21 located has adopted those rules. 22 Q. How many times have you been -- let me do 23 this a little slower. 24 How many times have you -- how many 25 times have you, prior to -- strike that.</p>	<p>196</p> <p>1 A. Standard of care is what a professional 2 mariner would provide either in his capacity as an 3 officer on board a vessel or as captain on a vessel 4 to somebody else. 5 Q. Would another definition of the standard of 6 care be -- tell me if this is fair -- "What a 7 reasonably prudent mariner would do in the same or 8 similar circumstances"? 9 A. Yes. 10 Q. Okay. So with respect to question number 1, 11 are you answering this question as -- in your 12 capacity as a professional mariner or as a 13 recreational boater? 14 A. Well, it starts out by saying, "How does a 15 professional mariner determine." So as a 16 professional mariner. 17 Q. And you're not -- so you're not weighing in 18 on question number 1 in your capacity as a 19 recreational boater, correct? 20 A. That is correct. 21 Q. Number 2 is "Utilizing the methodology 22 described above is the Eagle Pass section of the Rio 23 Grande River classified as a navigable water of the 24 United States as understood by professional mariners 25 and therefore subject to the U.S. Inland Roads of --</p>
<p>195</p> <p>1 How many times in the past have you 2 testified as an expert on the subject of whether or 3 not a water is a navigable water? 4 A. I have -- 5 MR. LYNK: Objection. Form. Sorry. Go 6 ahead. 7 A. I have not testified on -- to that. 8 Q. (BY MR. STONE) And is it fair to say in 9 this case you took it upon yourself to determine 10 whether or not this segment of the Rio Grande River 11 was a navigable water? 12 A. In order for me to give opinions about 13 navigational hazards and whether a certain rule of 14 the road applies or not, you have to know whether 15 it's a navigable water of the United States. 16 So I felt it was necessary to establish 17 that in fact it was a navigable water. So I took it 18 upon myself so that I had a basis or a foundation 19 for -- what I try to do is establish stepping stones 20 and lay the foundation from the simplest point and 21 then progress forward. 22 Q. And what you said that you're doing here is 23 establishing the standard of care, correct? 24 A. Yes. 25 Q. What is the standard of care?</p>	<p>197</p> <p>1 Rules of the Road?" Did I read that accurately? 2 A. You did. 3 Q. Now, I know it's built into the question, 4 but I'm going to ask it anyway. Are you providing an 5 opinion as a professional mariner as it relates to 6 question number 2, or as a recreational boater? 7 A. As a professional mariner. 8 Q. And with respect to number 1 -- I'm going to 9 go through and step back to 1 for a minute. "How 10 does a professional mariner determine if a" -- strike 11 that. Let me do it slower. 12 "How does a professional mariner 13 determine if a body of water that he or she is 14 planning to operate upon is classified as a navigable 15 water and with which rules they must comply?" 16 With respect to that question, are you 17 offering fact testimony or expert opinion? 18 A. I'm not sure how to separate the two in this 19 case. 20 Q. Are you an expert on the process that 21 mariners use to determine if a body of water is 22 classified as a navigable water? 23 A. I've served as a mariner for 40 years, a 24 professional mariner for 40 years and as an adjunct 25 professor three different times in a maritime academy</p>

<p style="text-align: right;">198</p> <p>1 and -- so, yes, I would say I'm an expert in that.</p> <p>2 Q. Okay. How does a professional mariner</p> <p>3 determine if a body of water that he or she is</p> <p>4 operating on is classified as a navigable water and</p> <p>5 with which rules they must comply?</p> <p>6 A. How does that take place?</p> <p>7 Q. Uh-huh.</p> <p>8 A. That -- if you want to save yourself some</p> <p>9 time, we can go to my opinions, because it goes</p> <p>10 through all of that. But I'm happy to jump to that</p> <p>11 and read it to you.</p> <p>12 Q. Just briefly, just go ahead and answer the</p> <p>13 question for us, though.</p> <p>14 A. They're -- either you're knowledgeable of --</p> <p>15 if it's deemed to be a navigable body -- a navigable</p> <p>16 water of the United States because you're on a ship</p> <p>17 that runs there all the time and you know it's</p> <p>18 established or you look at a chart and it shows where</p> <p>19 the line of demarcation is that changes the rules</p> <p>20 that you follow from international rules of the road</p> <p>21 to inland rules of the road, or you look in U.S.</p> <p>22 Coast Pilot or, in some cases, a sailing -- Admiralty</p> <p>23 Sailing Direction.</p> <p>24 THE REPORTER: I'm sorry, a what?</p> <p>25 THE WITNESS: Admiralty Sailing</p>	<p style="text-align: right;">200</p> <p>1 whether or not a body of water is classified as a</p> <p>2 navigable water, would that make me an expert on it</p> <p>3 too?</p> <p>4 MR. LYNK: Object to form.</p> <p>5 A. No, I didn't -- no.</p> <p>6 Q. (BY MR. STONE) Does the definition of a</p> <p>7 navigable water -- strike that.</p> <p>8 Is there a single definition of</p> <p>9 "navigable water"?</p> <p>10 A. No.</p> <p>11 Q. There's lots of different definitions of</p> <p>12 navigable water, right?</p> <p>13 A. Correct.</p> <p>14 Q. In this case we're dealing with the</p> <p>15 definition of navigable water as it relates to the</p> <p>16 River and Harbors Act, right?</p> <p>17 MR. LYNK: Object to form.</p> <p>18 A. Well, the bottom line is is it a navigable</p> <p>19 water of the United States? And the River and</p> <p>20 Harbors Act is perhaps part of that but not -- that's</p> <p>21 not the same thing.</p> <p>22 Q. Are you a expert on the River and Harbors</p> <p>23 Act?</p> <p>24 A. I am not.</p> <p>25 Q. Have you ever read the River and Harbors</p>
<p style="text-align: right;">199</p> <p>1 Direction.</p> <p>2 A. And then there are sometimes lists of bodies</p> <p>3 of water that are considered to be U.S. navigable</p> <p>4 waters in the CFRs and other federal publications.</p> <p>5 And if you cannot be certain of the determination</p> <p>6 based on those sources, you can go to the U.S. Coast</p> <p>7 Guard or the Corps of Engineers and ask for a</p> <p>8 determination.</p> <p>9 Q. So if I'm understanding your answer</p> <p>10 correctly, the answer to the first question of "How</p> <p>11 does a professional mariner determine if a body of</p> <p>12 water that he or she is or is planning to operate</p> <p>13 upon is classified as a navigable water and with</p> <p>14 which rules they must comply," the answer to that is</p> <p>15 to look it up or ask the U.S. Coast Guard. Is that</p> <p>16 fair?</p> <p>17 A. That's the short version of the answer, yes.</p> <p>18 Q. So how does one obtain an expertise in doing</p> <p>19 that, either looking something up or asking the Coast</p> <p>20 Guard?</p> <p>21 MR. LYNK: Object to form.</p> <p>22 A. By doing it for 40 years as a professional</p> <p>23 mariner and by teaching it to cadets at a maritime</p> <p>24 school.</p> <p>25 Q. (BY MR. STONE) If I knew how to look up</p>	<p style="text-align: right;">201</p> <p>1 Act?</p> <p>2 A. I have referred to it and looked through it,</p> <p>3 but no, I can't say I've read the entire thing. Just</p> <p>4 pertinent parts of it.</p> <p>5 Q. What are the -- going to question number 2.</p> <p>6 What is a U.S. -- what are the U.S. Inland Rules of</p> <p>7 the Road?</p> <p>8 A. What are they?</p> <p>9 Q. Uh-huh.</p> <p>10 A. They are a body of rules very similar in</p> <p>11 verbiage and structure to the International Rules of</p> <p>12 the Road by which mariners, both professional and</p> <p>13 recreational, must operate -- under which they must</p> <p>14 operate on inland waters.</p> <p>15 Q. Did you just say recreational as well?</p> <p>16 A. Yes.</p> <p>17 Q. So a minute ago I asked you if, when you</p> <p>18 were answering question number 2, you were doing it</p> <p>19 as a professional mariner or a recreational boater,</p> <p>20 and you said you were do -- you were answering that</p> <p>21 question as a professional mariner. Do you recall</p> <p>22 that?</p> <p>23 A. I do.</p> <p>24 Q. Is it your testimony now that you're also</p> <p>25 answering that question in your capacity as a</p>

<p style="text-align: right;">202</p> <p>1 recreational boater?</p> <p>2 A. No, I --</p> <p>3 MR. LYNK: Object to form.</p> <p>4 A. No, I would not expect a recreational boater</p> <p>5 to go through this process to determine that. I</p> <p>6 don't think they would even have a clue as to how to</p> <p>7 do this.</p> <p>8 Q. (BY MR. STONE) Were you asked to answer</p> <p>9 question number 2, or was this also a question that</p> <p>10 you formed on your own?</p> <p>11 A. All of these questions are questions I</p> <p>12 formed on my own.</p> <p>13 Q. Thank you. That's helpful; I don't have to</p> <p>14 do it for each.</p> <p>15 Moving on to question number 3, "Are the</p> <p>16 orange spheric components of the marine floating</p> <p>17 barrier buoys or floats?" Do you see that question?</p> <p>18 A. I do.</p> <p>19 Q. When you answered that question, are you</p> <p>20 answering that question in your capacity as a</p> <p>21 professional mariner or as a recreational boater?</p> <p>22 A. As a professional mariner.</p> <p>23 Q. As a professional mariner only?</p> <p>24 A. Yes.</p> <p>25 Q. Why don't I just go through this whole list</p>	<p style="text-align: right;">204</p> <p>1 as in your capacity as a professional mariner or as a</p> <p>2 recreational boater?</p> <p>3 A. Both.</p> <p>4 Q. And finally, question number 7, "Does the</p> <p>5 marine floating barrier diminish the navigable</p> <p>6 capacity of the Rio Grande?" Are you answering that</p> <p>7 question in your capacity as a professional mariner</p> <p>8 or as a recreational boater?</p> <p>9 A. Both.</p> <p>10 Q. Thank you for that clarification.</p> <p>11 So under question number 3, "Are the</p> <p>12 orange sphere components of the marine floating</p> <p>13 barrier buoys or floats?" Do you see that on the</p> <p>14 scene?</p> <p>15 A. Yes.</p> <p>16 Q. What is a buoy?</p> <p>17 A. A buoy is a floating object that conveys</p> <p>18 information to somebody such as a navigational buoy</p> <p>19 would tell you which side of the channel -- you know,</p> <p>20 limit of the channel edge or a slow speed zone or --</p> <p>21 it conveys navigational information in some fashion</p> <p>22 or another.</p> <p>23 Q. And what is a float?</p> <p>24 A. A float is something that supports something</p> <p>25 in the water.</p>
<p style="text-align: right;">203</p> <p>1 with that line of questioning so I don't have to do</p> <p>2 it again.</p> <p>3 Four question number 4, "What type of</p> <p>4 structure is the marine floating barrier that is</p> <p>5 installed on the Eagle Pass section of the Rio</p> <p>6 Grande?" Do you see that, question number 4?</p> <p>7 A. I do.</p> <p>8 Q. Are you answering -- in this case are you</p> <p>9 answering that question as a professional mariner or</p> <p>10 as a recreational boater?</p> <p>11 A. As a professional mariner.</p> <p>12 Q. Question number 5, "Does the marine floating</p> <p>13 barrier create a navigational obstacle and/or</p> <p>14 obstruction?" Do you see that question?</p> <p>15 A. I do.</p> <p>16 Q. In this case are you answering that question</p> <p>17 as a professional mariner or as a recreational</p> <p>18 boater?</p> <p>19 A. Both.</p> <p>20 MR. LYNK: Object to form.</p> <p>21 Q. (BY MR. STONE) Question number 6, "Is the</p> <p>22 marine floating barrier a hazard to navigation?" Do</p> <p>23 you see that question?</p> <p>24 A. Yes.</p> <p>25 Q. Are you answering that question in this case</p>	<p style="text-align: right;">205</p> <p>1 Q. Question number 4, "What type of structure</p> <p>2 is the marine floating barrier?" Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. What is a structure?</p> <p>5 A. A structure is the putting together of</p> <p>6 different parts to create something.</p> <p>7 Q. What type of structure is the marine</p> <p>8 floating barrier?</p> <p>9 A. A -- what is known in the maritime world as</p> <p>10 a boom, B-O-O-M.</p> <p>11 Q. What is a boom?</p> <p>12 A. A boom is a string of floats that can</p> <p>13 restrict an area, creating either an obstacle or an</p> <p>14 obstruction, to prevent the movement of vessels.</p> <p>15 Q. What is a weir?</p> <p>16 A. A weir is very similar to a jetty. It's a</p> <p>17 structure built frequently of rocks or some other</p> <p>18 durable substance that is used to divert the water.</p> <p>19 Q. What is a pier?</p> <p>20 A. A pier is a dock of sorts that extends out</p> <p>21 into a body of water.</p> <p>22 Q. What is a wharf?</p> <p>23 A. A wharf is -- could be a pier or key that</p> <p>24 vessels moor alongside.</p> <p>25 Q. What is a breakwater?</p>

<p style="text-align: right;">206</p> <p>1 A. A breakwater is a structure that is designed 2 to eliminate or reduce the destructive impact of 3 waves. 4 Q. What is a bulkhead? 5 A. A bulkhead is a wall that can make up a -- 6 in the water that can make up a breakwater or other 7 structure. 8 Q. How is a bulkhead different than a 9 breakwater? 10 A. A bulkhead can be a breakwater. A 11 breakwater could be a bulkhead but not necessarily. 12 It could also be a pile of rocks or just some other 13 substance. 14 Q. What is a jetty? 15 A. A jetty is a structure that extends out into 16 the water that is used to calm the waters between the 17 structures of the jetties. You see them at inlets 18 quite a bit. 19 Q. What is a dolphin? 20 A. A dolphin is one or more pilings or poles or 21 metal pipes or many other things that are used to 22 hold vessels off of something such as a pier or to 23 secure mooring lines to. 24 Q. Question number 5, "Does the marine floating 25 barrier create a navigational obstacle and/or</p>	<p style="text-align: right;">208</p> <p>1 not aware of that they hit with their vessel. It 2 could be a shoal. It could be -- that's what's 3 coming to me at this point, but, yes, it could be 4 other things as well. 5 Q. Number 7 finally, "Does the marine floating 6 barrier diminish the navigable capacity of the Rio 7 Grande?" Do you see that question? 8 A. I do. 9 Q. What is navigable capacity? 10 A. Well, to break it down, capacity is the 11 maximum volume or the maximum ability to produce 12 something. And so navigable capacity would mean that 13 it -- how many vessels, how much -- how many vessels 14 can move through or at what speed would -- does it 15 slow it down? So navigable capacity is how many 16 vessels can move through an area, a certain area, in 17 a certain amount of time. 18 Q. So if I understand your -- if I understand 19 you correctly, navigable capacity is how many vessels 20 can pass through an area in a set amount of time? 21 A. Yes. 22 MR. LYNK: Object to form. 23 A. That's certainly... 24 Q. (BY MR. STONE) Before we move on, we talked 25 earlier about the standard of care, right?</p>
<p style="text-align: right;">207</p> <p>1 obstruction?" Did I read that accurately? 2 A. You did. 3 Q. What is an obstacle? 4 A. An obstacle is something that impedes the 5 progress of something, that slows something down, but 6 that can be surmounted. Yeah, you can go around it 7 or over it or under it. 8 Q. What is an obstruction? 9 A. An obstruction is something that blocks the 10 movement of something through something. You can 11 have an obstructed bowel or an obstructed drain on 12 your sink and stuff cannot go past it. 13 Q. We're going to get deeper into your specific 14 opinions, but I want to wrap up with this. 15 So number 6 is "Is the marine floating 16 barrier a hazard to navigation," right? 17 A. Yes. 18 Q. What is a -- define for me what a hazard to 19 navigation is. 20 A. A hazard to navigation is something that can 21 typically cause damage to a vessel or cause a 22 grounding or some other such marine incident as that. 23 Q. Is it anything else? 24 A. I'm sure that it could be expounded upon if 25 there is -- it could be a structure that somebody is</p>	<p style="text-align: right;">209</p> <p>1 A. Yes. 2 Q. In which of these seven questions do you 3 opine on the standard of care? 4 A. Well, it's certainly in the first one, "Are 5 you doing what a reasonable and prudent mariner would 6 do in the same or similar circumstances?" So you're 7 discussing the standard of care there. 8 And the second one, there certainly is a 9 standard of care there as well, "Utilizing the 10 different methods, are you doing a complete and 11 thorough job and adequate research if necessary, or 12 particularly -- how far you need to go. Do you in 13 fact need to reach out to authorities to make a 14 determination of which set of rules apply, U.S. 15 inland or international?" 16 Q. Okay. So let's take these one at a time, 17 just so I'm -- I think that's going to be a little 18 easier. 19 What is the standard of care -- starting 20 with question 1 what is the standard of care for a 21 professional mariner in determining whether a body of 22 water is classified as a navigable water? 23 A. The standard of care would be if they do not 24 already know with certainty whether it is or is not a 25 navigable water of the United States, that they would</p>

<p style="text-align: right;">210</p> <p>1 use certain resources to try to make a determination. 2 And if they're unable to do so using those resources, 3 then they can reach out to the Coast Guard or Corps 4 of Engineers. 5 Q. And with respect to number 2, what is the 6 standard of care for determining whether the Eagle 7 Pass section of the Rio Grande River is classified as 8 a navigable water of the United States? 9 A. If you were operating in that area and you 10 were unaware of its designation, then the standard of 11 care would be to thoroughly use the methodology 12 described previously in 1 to make that determination. 13 Q. So the answer to number 2 is the same as the 14 answer to number 1 -- is that accurate -- as it 15 relates to the standard of care? 16 A. Yes, essentially. 17 Q. Okay. For number 3, "Are the orange spheres 18 component -- orange sphere components of the marine 19 floating barriers buoys or floats?" What is the 20 standard of care? 21 A. That does not apply to this particular 22 again. 23 Q. Does the -- what is the standard -- strike 24 that. For number 4, "What type of structure is the 25 marine floating barrier that is installed in the</p>	<p style="text-align: right;">212</p> <p>1 obstacle that can be maneuvered around or some 2 obstruction, depending upon how they're trying to 3 pass it, that would be a very critical determination 4 to be made. 5 Q. And if they didn't make that determination, 6 it would be fair to say that they were violating the 7 standard of care, right? 8 A. Yes. 9 Q. Number 6, what is the standard of care as it 10 relates to, "Is the marine floating barrier a hazard 11 to navigation?" 12 A. Well, any mariner either professional or 13 recreational should always be using their senses, 14 situational awareness to -- that's the word I was 15 looking for -- to locate -- to first see and then 16 observe and then make a determination as to if 17 something in the water is a hazard to navigation or 18 not. 19 Q. And in this case I guess you personally 20 witnessed somebody violating that standard of care, 21 huh? 22 MR. LYNK: Object to form. 23 A. Excuse me. I'm not following your question. 24 Q. (BY MR. STONE) Right. Didn't you testify 25 earlier that you watched one of the airboats collide</p>
<p style="text-align: right;">211</p> <p>1 Eagle Pass section of the Rio Grande?" What is the 2 standard of care as it relates to that question? 3 A. It does not apply. 4 Q. Does the standard of care apply as to 5 question 5, "Does the marine floating barrier create 6 a navigational obstacle and/or obstruction?" 7 A. Yes, if you're maneuvering in that area, you 8 need to be aware of its presence. You should know, 9 if the information is available, whether it has 10 concrete anchors that extend out on either side. So 11 the standard of care would be to make a determination 12 as to whether or not the barrier is an obstacle or 13 obstruction and if it needs to be avoided. 14 Q. That's what a reasonably prudent mariner 15 would do in the same or similar circumstances, right? 16 A. Yes. I mean, you would essentially know 17 that. 18 Q. They would determine whether or not the -- 19 they would first determine where the location of the 20 floating buoys are. They would determine where the 21 concrete is in relation to it and how they would need 22 to navigate around to it ensure that they don't have 23 any kind of collision, right? 24 A. That's right. And if they can make the 25 distinction between the two, whether it's just an</p>	<p style="text-align: right;">213</p> <p>1 with the buoys? 2 A. No. 3 Q. Oh, you didn't witness one of the airboats 4 collide with the buoys during your February visit? 5 A. No. I observed one of the airboats touching 6 one of the concrete blocks. 7 Q. Ah, I see, one of the concrete blocks. 8 A. Not the floats themselves. 9 Q. Thank you for that clarification. That's 10 helpful to understand. 11 So you witnessed somebody, though -- you 12 just testified a moment ago that the standard of care 13 would be to be aware of those hazards and to navigate 14 around them, right? 15 A. That's correct. 16 Q. So you personally witnessed somebody from 17 CBP, one of these boat operators, violate the 18 standard of care by colliding with it. Is that fair? 19 MR. LYNK: Object to form. 20 A. I would say they made a misjudgment and 21 thought they had adequate water to go over when in 22 fact they did not. So if they were most prudent, 23 they would have not gone over the top of the anchor, 24 being uncertain as to how much clearance there was. 25 Q. (BY MR. STONE) Do you have an opinion on</p>

<p style="text-align: right;">214</p> <p>1 whether or not that boat operator met the standard of 2 care in this case -- 3 A. Well -- 4 Q. -- for operating around the buoys? 5 A. I would say anytime that you go into an area 6 and are uncertain as to whether there's enough 7 clearance and then you go into it -- that area 8 anyway, that that was a misjudgment and not meeting 9 the standard of care. 10 Q. Are you aware of any other collisions that 11 have occurred with the buoys other than the one that 12 you -- strike that. Be careful with my language 13 because when you hear "buoys," you're thinking about 14 just the floats. So let me be very specific with my 15 language. 16 Other than what you personally witnessed 17 during the February visit, are you aware of any other 18 vessels colliding with either the floats or the 19 concrete blocks upon which they sit? 20 A. I am not. 21 Q. And is that a testament to boat operators 22 complying with the standard of care and being aware 23 of the buoys and where they lie in the water and 24 operating their boats and maneuvering around it? 25 A. I'm just not aware. I'm not saying that</p>	<p style="text-align: right;">216</p> <p>1 A. You did. 2 Q. What is a riverman? 3 A. A riverman is a professional mariner that 4 works on a river. 5 Q. And how is that different than a mariner? 6 A. Just on the body of waters on which they 7 operate. 8 Q. So a riverman operates on rivers, and a 9 mariner operates on what? 10 A. A mariner can operate both in open water and 11 on rivers and lakes. A person on the Great Lakes is 12 a mariner. A person who operates on the Mississippi 13 River, if they're solely operating on the river, 14 they're tugboats that run up and down, they would be 15 a riverman. Professional mariners frequently go up 16 and down the Mississippi River as well. 17 Q. Have you ever traveled up and down the 18 Mississippi River? 19 A. Many times. 20 Q. Many times. So you're familiar with the 21 body of rules and regulations that are in effect that 22 govern the Mississippi River, right? 23 A. I am. 24 Q. Is the Mississippi River a navigable water? 25 A. Yes.</p>
<p style="text-align: right;">215</p> <p>1 there hasn't been others. I'm just not aware of 2 them. 3 Q. Is the -- finally, number 7, as it relates 4 to the standard of care, "Does the marine floating 5 barrier diminish the navigable capacity of the Rio 6 Grande?" What is the -- if applicable, what is the 7 standard of care as it relates to that question? 8 A. I would say it's not applicable. 9 Q. Next I want to go to page 10 of your expert 10 report where you begin with answering the first 11 question we talked about a few minutes ago. Let me 12 know when you get to page 10. 13 A. I am on page 10. 14 Q. So do you see under Discussion and Basis of 15 Opinions the first question is, "How does a 16 professional mariner determine" -- it's that first 17 question. Do you see the answer below? 18 A. Yes. 19 Q. Okay. So I want to read the first sentence, 20 and I've got a follow-up question. 21 You wrote, "It is essential that a 22 mariner/riverman is aware of which authority has 23 oversight of a waterway they are traversing and what 24 body of rules and regulations are in effect." Did I 25 read that accurately?</p>	<p style="text-align: right;">217</p> <p>1 Q. How many times in the last ten years have 2 you traveled on a body of water that was unknown to 3 you? 4 A. Unknown to me in that I had not been there 5 before and didn't know the waters or didn't know what 6 rules applied? 7 Q. Sure. So let me ask a more clarifying 8 question. 9 In the last ten years how many times 10 have you operated a boat on a body water for which 11 you were unaware whether or not it was a navigable 12 water of the United States? 13 A. Not frequently, if at all. I'm pretty much 14 aware of what waterways I'm operating on and what 15 rules apply. Again, that's the essential -- that's 16 really about the only reason why it's important for a 17 mariner or a recreational boater to operate -- to 18 know if it's a navigable water or not is to know 19 whether or not the rule -- Inland Rules of the Road 20 apply. 21 Q. So you testified a few -- a moment ago that 22 not very often in the last ten years have you 23 operated a boat on a body of water for which you did 24 not previously know whether it was a navigable water 25 of the United States?</p>

<p style="text-align: right;">218</p> <p>1 A. I can't think of any. None that I can 2 recall. 3 Q. Actually -- so the answer isn't like, not 4 many; it's actually none that you can recall at this 5 time? 6 A. Correct. 7 Q. How much time did -- so in your expert 8 report you talk about the process that you went 9 through in trying to determine for the purposes of 10 your testimony whether or not the segment of the Rio 11 Grande River where the buoys are located is a 12 navigable water, right? 13 A. Correct. 14 Q. And I want to step back, actually, before I 15 hone in on that, and ask big picture. 16 When you're testifying today as an 17 expert in this case, you're not talking about mile 18 marker 275.5 to 610, are you? You're only testifying 19 about the area right around where the buoys are 20 located. Is that accurate? 21 A. That's what I'm testifying to. However, in 22 my research and analysis and supporting my opinions, 23 it's my understanding and belief that that entire 24 stretch is U.S. -- is navigable waters in the United 25 States.</p>	<p style="text-align: right;">220</p> <p>1 A. Yes. 2 Q. You've been a mariner for most of your life. 3 Is that fair? 4 A. Yes. 5 Q. Is there any other body of water that you've 6 spent 10 to 15 hours researching to determine whether 7 or not it was a navigable body of water? 8 A. No. I could have spent a lot less time on 9 this, too, but I saw -- the first time I saw resource 10 from the Corps or Coast Guard that says it's 11 navigable, I would have stopped doing research. But 12 I -- wanting to be completely thorough, I looked at 13 every resource that I could find that discussed it. 14 Q. So let's talk about each of them. You 15 started with the Admirable -- Admiralty Sailing 16 Directions, right? 17 A. Yes. 18 Q. What are the Admiralty Sailing Directions? 19 A. They are sailing directions that are put out 20 by the National Geospatial-Intelligence Agency -- I 21 believe that I'm correct on that -- that provide 22 information for ocean-going mariners going to 23 different ports. 24 Q. What do the Admiralty Sailing Directions say 25 about mile marker 275.5 to 610 of the Rio Grande</p>
<p style="text-align: right;">219</p> <p>1 Q. So you believe that the entire stretch of 2 mile marker 275.5 to 610 is a navigable water of the 3 U.S., right? 4 A. That's correct. 5 Q. Are there any other opinions that you have 6 in this case as it relates to mile markers 6 -- for 7 the entirety of mile markers 275.5 to 610? 8 A. No. That -- not that I can think of at this 9 time -- well, that the Inland Rules of the Road apply 10 because of that determination. 11 Q. You talk in this section of your report 12 about the process that you went through in 13 determining, for the purposes of your opinions in 14 this case, that the Rio Grande River is a navigable 15 water, right? 16 A. Yes. 17 Q. Approximately how much time did you spend 18 determining -- strike that. 19 Approximately how long did it take you 20 to determine -- strike that. 21 Approximately how much time did you 22 spend determining that this portion of the Rio Grande 23 River is navigable? 24 A. I would estimate 10 or 15 hours. 25 Q. Now, you're 68 years old, right.</p>	<p style="text-align: right;">221</p> <p>1 River? 2 A. It's not listed. 3 Q. What does the Admiralty Sailing Directions 4 say about the Eagle Pass section of the Rio Grande 5 River? 6 A. It's not mentioned. 7 Q. So it doesn't mention Eagle Pass? 8 A. Right. 9 Q. And it doesn't mention mile marker 275.5 to 10 610, does it? 11 A. No. 12 Q. Next you talk about the United States Coast 13 Pilots, right? 14 A. Yes. 15 Q. What are the United States Coast Pilots? 16 A. The United States Coast Pilots are resources 17 that are published by the Department of Commerce with 18 NOAA and National Ocean Services that provide 19 information that's not easily portrayed on charts. 20 To mariners it lists rules and regulations, different 21 resources within an area and so forth. 22 So they're -- they're a series of 23 volumes of books that provide information about 24 different places either inland or along the coastline 25 of the United States that aid a mariner in making a</p>

<p style="text-align: right;">222</p> <p>1 voyage plan and having a safe passage through that</p> <p>2 area.</p> <p>3 Q. And what does the U.S. Coast Pilots say</p> <p>4 about the Rio Grande River on mile marker 275.5 to</p> <p>5 610?</p> <p>6 A. It does not address it.</p> <p>7 Q. Next you talk about the U.S. Notice to</p> <p>8 Mariners in your report, right?</p> <p>9 A. Yes.</p> <p>10 Q. And they issue marine safety information,</p> <p>11 correct?</p> <p>12 A. Correct.</p> <p>13 Q. What do -- what does -- strike that.</p> <p>14 What are the U.S. notices to -- U.S.</p> <p>15 Notice to Mariners say about the Rio Grande River for</p> <p>16 mile marker 275.5 to 610?</p> <p>17 A. It does not address it.</p> <p>18 Q. You also mentioned Local Notice to Mariners</p> <p>19 reports, right?</p> <p>20 A. That's correct.</p> <p>21 Q. I think we talked about those earlier,</p> <p>22 didn't we, earlier in the day?</p> <p>23 A. We did.</p> <p>24 Q. All right. What do the Local Notice to</p> <p>25 Mariners say about the Rio Grande River from mile</p>	<p style="text-align: right;">224</p> <p>1 recently.</p> <p>2 Q. Next you mention that you checked the CFR --</p> <p>3 A. Yes.</p> <p>4 Q. -- to see if it was a water that was</p> <p>5 declared nonnavigable, right?</p> <p>6 A. That's correct.</p> <p>7 Q. And in doing that research, did you find any</p> <p>8 information on the Rio Grande River mile marker 275.5</p> <p>9 to 610?</p> <p>10 A. It was not in the list of waters that</p> <p>11 were -- had been designated as not being navigable</p> <p>12 waters of the U.S.</p> <p>13 Q. So at that point you talk in here about how</p> <p>14 you defer them to looking at state law and the U.S.</p> <p>15 Army Corps, right?</p> <p>16 A. Well, there's -- part G is actually U.S.</p> <p>17 Coast Guard and Corps of Engineer published</p> <p>18 instructions and studies. So you can go to those.</p> <p>19 Q. Yeah, sorry. I missed the Coast Guard in</p> <p>20 there, right.</p> <p>21 A. Okay.</p> <p>22 Q. So I guess let me backtrack a little bit.</p> <p>23 Earlier when we began talking in this section, you</p> <p>24 said you spent about 10 to 15 hours researching</p> <p>25 whether or not this section of the Rio Grande River</p>
<p style="text-align: right;">223</p> <p>1 marker 275.5 to 610?</p> <p>2 A. There was nothing I could find.</p> <p>3 Q. Next you talk about Broadcast Notice to</p> <p>4 Mariners, right?</p> <p>5 A. Yes.</p> <p>6 Q. What is a Broadcast Notice to Mariners?</p> <p>7 A. Those are the notices that are given</p> <p>8 verbally over radio broadcasts or through something</p> <p>9 called NAVTEX, which is like the precursor to texts,</p> <p>10 where they can send printed information over radio</p> <p>11 waves to mariners about information that is of a more</p> <p>12 immediate concern.</p> <p>13 Q. And I think we talked also about Broadcast</p> <p>14 Notices to Mariners earlier in the day. Do you</p> <p>15 recall that as well?</p> <p>16 A. I do.</p> <p>17 Q. What do the Broadcast Notice to Mariners say</p> <p>18 about the Rio Grande River from mile marker 275.5 to</p> <p>19 610?</p> <p>20 A. They're not addressed.</p> <p>21 Q. Okay.</p> <p>22 A. That area is not addressed, or put it this</p> <p>23 way: In checking with the Coast Guard in that</p> <p>24 district, they did not have any record of any</p> <p>25 broadcast notices being given for that area anytime</p>	<p style="text-align: right;">225</p> <p>1 was a navigable water of the U.S., right?</p> <p>2 A. I did as an estimate. It could be more or</p> <p>3 less. Well, it certainly couldn't be less, but it</p> <p>4 could be more.</p> <p>5 Q. And then you said you could have</p> <p>6 short-circuited that whole research and just relied</p> <p>7 on what the Coast Guard said and the U.S. Army Corps</p> <p>8 said about whether or not it was a navigable water,</p> <p>9 right?</p> <p>10 A. Yes.</p> <p>11 Q. Other than the Coast Guard -- strike that.</p> <p>12 Let's do them one step at a time. What</p> <p>13 did the Coast Guard say, from your research, about</p> <p>14 whether or not mile marker 275.5 to 610 on the Rio</p> <p>15 Grande River is a navigable water?</p> <p>16 A. Well, one of the sources are commandant</p> <p>17 instructions, and Commandant Instruction 16731</p> <p>18 entitled, "Navigability Determination, Rio Grande</p> <p>19 River, Texas," that was issued October 19th of 1984</p> <p>20 states that from 1947 to 1975 the Rio Grande was</p> <p>21 listed among the navigational waters of the United</p> <p>22 States.</p> <p>23 And then in 1976, that list stopped</p> <p>24 being maintained. And then -- so it goes on to say</p> <p>25 that "Under the rule, despite artificial or natural</p>

<p style="text-align: right;">226</p> <p>1 obstructions, once a stream has been found to be of 2 navigable use, it remains so, the designated stretch 3 of the Rio Grande River" -- and here it is talking 4 about mile 0 to mile one thousand twelve forty seven. 5 So once it has been found to be of navigable use, it 6 remains so. And "the designated stretch of the Rio 7 Grande River remains a navigable waterway of the 8 United States." Pretty succinct. 9 Q. So in 19 -- sorry. Strike that. 10 So based on a document from the Coast 11 Guard in 1984 that talks about a study from 1947 to 12 1975 -- I shouldn't say "study." Strike that. 13 Other than sources from the Coast Guard 14 and the U.S. Army Corps of Engineers, was there any 15 other sources that you relied on in determining that 16 the Rio Grande River from mile marker 275.5 to 610 is 17 a navigable water of the United States? 18 A. No. Let me -- let me answer that question 19 more thoroughly. Within the U.S. Inland Rules of the 20 Road -- 21 THE REPORTER: Im sorry, the what? 22 THE WITNESS: U.S. Inland Rules of the 23 Road. 24 THE REPORTER: Thank you. 25 A. -- the first rule is -- it discusses --</p>	<p style="text-align: right;">228</p> <p>1 A. No, that's not what I was trying to say. I 2 discuss it further into my report. So if you go 3 beyond the Coast Guard and the Corps of Engineer, you 4 actually can look at laws established by Texas. And 5 in the Texas Parks and Wildlife River Guide, it talks 6 about the navigability of waters and which rules 7 apply. 8 And there's two separate ways of 9 determining that. One is navigable in fact, which 10 means it's actually being navigated. And the other 11 is navigable by statute. And then I discuss what the 12 two of those mean in more detail. 13 And then the navigable by statute 14 says -- 15 THE REPORTER: I'm sorry, the navigable 16 what, statute? 17 THE WITNESS: Navigability by statute. 18 A. -- "Under a law dating from 1837," it says, 19 "a stream is navigable so far as it retains an 20 average width of 30 feet" -- and emphasis on "average 21 width" -- "from its mouth to the" -- "from the mouth 22 up. The width measured in distance between the banks 23 and" -- and then they say this, "A stream satisfying 24 the 30-foot rule is sometimes referred to as 25 statutorily navigable." And then...</p>
<p style="text-align: right;">227</p> <p>1 Q. I'm just -- are you reading from a document 2 right now? 3 A. I'm reading from my report, yes. 4 Q. Which page of your report are you on? 5 A. Page 17, part D, paragraph D. 6 Q. Okay. 17D. 7 A. It talks -- it, says, "United States Coast 8 Guard Inland Rules apply to all public waterways of 9 this state to the extent that they are applicable." 10 That's within the -- I'm sorry, my eyes 11 are starting to go. I'll just read it. "The U.S. 12 Inland Rules of the Road apply to all 'navigable 13 waters of the United States.' Supporting this, the 14 Water Safety Act, Chapter 31 of the Texas Parks and 15 Wildlife Code, which applies to all public waters of 16 the state and to all water craft navigating or moving 17 on the public water, states: 'The United States 18 Coast Guard Inland Rules of Road apply to all public 19 water of this state to the extent they are 20 applicable.' 21 Q. (BY MR. STONE) Okay. So if I'm 22 understanding you correctly, is your testimony today 23 that the U.S. Inland Rules of the Road defined mile 24 marker 275.5 to 610 of the Rio Grande River as a 25 navigable water?</p>	<p style="text-align: right;">229</p> <p>1 Q. So is it your testimony today that every 2 body of water in Texas that maintains an average of 3 30 feet in width is a navigable water of the United 4 States? 5 A. Based on the statute as listed by the Texas 6 Parks and Wildlife River Guide, that appears to be 7 the case. 8 Q. Texas Parks and Wildlife River Guide is not 9 a law, is it? 10 A. No, but -- 11 Q. It's just a document you saw on the 12 internet, right? I'm just asking about the Texas 13 Parks and Wildlife River Guide. 14 A. Yes, that is correct. 15 Q. Okay. 16 A. But it's published by the Texas.gov. 17 Q. That may be true, but I want to hone in on 18 this. So -- 19 A. Okay. 20 Q. I just want to really -- let me get some 21 clarity here. 22 So it's your testimony today that every 23 body of water in Texas that maintains an average of 24 30 feet in width is a navigable water of the United 25 States?</p>

<p style="text-align: right;">230</p> <p>1 A. That's not my contention. That's just what 2 is stated in that document. 3 Q. So in your -- is that just a fact? 4 A. I'm telling you that it is something that 5 was stated in that river guide. 6 Q. Did you -- did you rely on that in forming 7 your opinions in this case? 8 A. I didn't need to. 9 Q. Do you have an opinion on whether or not 10 that renders the Rio Grande River -- this law that 11 you cite from 1837 renders the Rio Grande River from 12 mile marker 275.5 to 610 a navigable water of the 13 U.S.? 14 A. I think it's something that corroborates 15 that, but in my opinion it's already been established 16 by both the Corps and the Coast Guard. 17 Q. So going back about ten minutes ago to the 18 question I originally asked, other than the Coast 19 Guard and the U.S. Army Corps of Engineers, that 20 was -- that's all the documents that you relied on in 21 terms of concluding that the Rio Grande River from 22 mile marker 275 to 610 is a navigable water of the 23 U.S., right? 24 A. Yes, I'll concede to that. 25 Q. Okay. So next question, number --</p>	<p style="text-align: right;">232</p> <p>1 A. To this question, no, not necessarily. 2 Q. This is a semantic question. Is that fair? 3 MR. LYNK: Object to form. 4 A. No, I don't think a buoy and a float are 5 interchangeable words or just a matter of semantics. 6 I think they are quite different and what -- again, 7 trying to use building blocks, what I'm going to want 8 to do is use these definitions to establish that the 9 structure is a boom, which is not made of buoys, 10 which is a structure, per se, and that's really what 11 I'm trying to establish. Just laying the foundation. 12 Q. (BY MR. STONE) So the only -- it's fair to 13 say that the relevance of whether or not the orange 14 portion is a buoy or a float, its only relevance is 15 to whether or not the overall structure is a boom or 16 not. Is that fair? 17 MR. LYNK: Object to form. 18 A. That is certainly one of the significant 19 aspects of it. 20 Q. (BY MR. STONE) If the orange floating 21 portion of the floating barrier, as we're calling it 22 right now -- if those were buoys, would it be a boom? 23 A. If -- they're not buoys; they're floats, and 24 if it was constructed -- no, that -- that's -- 25 question doesn't really make sense.</p>
<p style="text-align: right;">231</p> <p>1 A. Well, actually I'm going to -- if we can go 2 back just a little bit. And I don't want to beat the 3 horse any more than you do. But it talks about the 4 U.S. Inland Rules of the Road apply to all navigable 5 waters of the United States, and this is stated in 6 the Water Safety Act Chapter 31 of the Texas Parks 7 and Wildlife Code. So I think it goes beyond a river 8 guide. It's just reported in that guide. 9 Q. Okay. So I feel like we answered questions 10 1 and 2 with the prior line of questioning, so I want 11 to start with question 3. 12 A. Okay. 13 Q. If you can turn to page 18 of your expert 14 report? 15 A. Okay. 16 Q. At the top it says, "Are the orange sphere 17 components of the marine floating barrier buoys or 18 floats?" Do you see that? 19 A. I do. 20 Q. Earlier I asked to you define what a buoy is 21 and what a float is. Do you recall that? 22 A. I do. 23 Q. Okay. Is -- let me just sort of ask it 24 plainly. Does the answer to this question change 25 anything in the case?</p>	<p style="text-align: right;">233</p> <p>1 Q. Okay. Assume for a moment that the orange 2 floating portion of the -- the orange spheres on the 3 floating barrier -- assume for a moment that those 4 are buoys, okay? Would you still define the floating 5 barrier as a boom? 6 MR. LYNK: Object to form. 7 A. If you were to take a group of buoys and 8 string them together, it would create a boom, and the 9 buoys would be serving as floats for that boom. 10 You're talking mostly about a matter of 11 function. And a buoy could certainly float something 12 on the surface of the water. So it could they could 13 potentially -- you could take a navigational buoy and 14 get ten of them and put them in a string, and it 15 would serve the same purpose. So whether that meets 16 the definition or not, I can't say. 17 Q. (BY MR. STONE) The definition of what? 18 A. Of a boom. 19 Q. So when I asked -- if I -- if I'm 20 understanding you correctly -- I asked you a 21 hypothetical. I asked you to assume for the purposes 22 of your answer that the orange floating portions were 23 buoys. And would that change your opinion of whether 24 or not the floating barrier is a boom or not? 25 And you testified, if I'm understanding</p>

<p style="text-align: right;">234</p> <p>1 you correctly, that you cannot make that</p> <p>2 determination?</p> <p>3 MR. LYNK: Object to form.</p> <p>4 A. No. What I'm trying to say that if the</p> <p>5 floats -- if you substituted buoys for floats, they</p> <p>6 would then, by virtue of how they were being used, be</p> <p>7 floats. They were just shaped and designed like</p> <p>8 buoys, but the function of that is to support</p> <p>9 something to create a barrier to prevent things.</p> <p>10 So, yes, I would say you could use buoys</p> <p>11 and it would be -- serve the same function as a boom.</p> <p>12 Whether technically it would be described as that or</p> <p>13 not I think would be a matter of debate.</p> <p>14 Q. (BY MR. STONE) So if I -- if we put a light</p> <p>15 on each of the -- strike that. Let me ask again.</p> <p>16 If we put a light on top of the -- what</p> <p>17 you've described as a float --</p> <p>18 A. Uh-huh.</p> <p>19 Q. -- would that make it a buoy, if we put a</p> <p>20 navigational light on top of it?</p> <p>21 A. I don't know. If you get -- if we could</p> <p>22 jump ahead to the definition of a boom, it is an</p> <p>23 obstacle strung or a continuous barrier usually</p> <p>24 floating at water level within a navigable stretch of</p> <p>25 water to control or block navigation.</p>	<p style="text-align: right;">236</p> <p>1 have to have -- to be conveying signal or signals to</p> <p>2 convey certain information.</p> <p>3 Q. Okay. Let's keep going with this</p> <p>4 hypothetical. So now I've put navigational lights on</p> <p>5 them. It's -- we're communicating; there's a purpose</p> <p>6 to it.</p> <p>7 Is the floating barrier still a boom if</p> <p>8 I've now transformed those floats into buoys?</p> <p>9 A. Yes.</p> <p>10 Q. Why?</p> <p>11 A. Because under the definition of a boom, it</p> <p>12 states, is an obstacle strung or continuous barrier</p> <p>13 usually floating at the water level with</p> <p>14 navigational -- within the navigational stretch of</p> <p>15 water to control or block navigation.</p> <p>16 Q. But isn't it fair to say, under this</p> <p>17 hypothetical, that because we've made them buoys by</p> <p>18 putting lights on top of them for navigational</p> <p>19 purposes, their purpose is no longer to obstruct</p> <p>20 navigation? Would that be fair?</p> <p>21 MR. LYNK: Object to form.</p> <p>22 A. I don't think so, no.</p> <p>23 Q. (BY MR. STONE) Now, you would agree with me</p> <p>24 that most booms are typically spread lengthwise</p> <p>25 across a body of water. Is that fair?</p>
<p style="text-align: right;">235</p> <p>1 So using that definition, yes, it would</p> <p>2 be -- you could use buoys and create a boom. You can</p> <p>3 use trees to do that. You can pretty much use</p> <p>4 anything that floats.</p> <p>5 MR. STONE: Objection. Nonresponsive.</p> <p>6 Q. (BY MR. STONE) So my question is about</p> <p>7 floats and buoys.</p> <p>8 A. Uh-huh.</p> <p>9 Q. I'm asking you if we put navigational lights</p> <p>10 on top of the floats, would they become buoys?</p> <p>11 A. I don't know the answer to that question.</p> <p>12 Q. What is a buoy?</p> <p>13 A. A buoy is defined as a distinctly shaped and</p> <p>14 marked float, something carrying a signal or signals,</p> <p>15 anchored to a -- to mark a channel, anchorage,</p> <p>16 navigational hazard, etcetera.</p> <p>17 So if you took one of those spheres and</p> <p>18 put a signal or signals on it that are supposed to</p> <p>19 convey certain information, then, yes I would say</p> <p>20 it's a buoy.</p> <p>21 Q. Okay. We've gotten there, okay. So it is a</p> <p>22 buoy if I put -- if we put navigational lights on top</p> <p>23 of these orange floating spheres, it could constitute</p> <p>24 a buoy?</p> <p>25 A. It could constitute a buoy, but it would</p>	<p style="text-align: right;">237</p> <p>1 A. Not necessarily, no.</p> <p>2 Q. I'm not talking about necessarily; I'm</p> <p>3 saying most.</p> <p>4 A. Booms are lengthwise.</p> <p>5 Q. Would you agree that booms primarily are</p> <p>6 used lengthwise when they're used in a river?</p> <p>7 A. Running parallel to the river such as</p> <p>8 these --</p> <p>9 Q. Running from --</p> <p>10 A. -- this one is?</p> <p>11 Q. No.</p> <p>12 A. Perpendicular.</p> <p>13 Q. Perpendicular to the water. In other words</p> <p>14 a bank to bank obstruction. You depict it in --</p> <p>15 let's go to page 21 of your expert report.</p> <p>16 Do you see the image -- images on page</p> <p>17 21 of your expert report?</p> <p>18 A. I do.</p> <p>19 Q. Okay. Is -- would you agree that that's the</p> <p>20 most common use of booms in rivers?</p> <p>21 A. Well, these days it's very frequently --</p> <p>22 they're used around power plants and, since 911, with</p> <p>23 enhanced security, around ship terminals that have</p> <p>24 hazardous materials so they can come out and just</p> <p>25 encompass it, and they can -- around power plants</p>

<p style="text-align: right;">238</p> <p>1 particularly they run parallel with the direction of 2 the river. And whether that's the most common use or 3 not, I don't know. 4 Q. Are you an expert on booms? 5 A. No. 6 Q. Are you an expert on floats? 7 A. No. 8 Q. Are you an expert on buoys? 9 A. No. 10 Q. Have you ever built a boom? 11 A. I have not. 12 Q. Why don't we take a break for a few minutes? 13 We've been going for about an hour. 14 THE VIDEOGRAPHER: Off the record. The 15 time is 4:29. 16 (Recess 4:29 p.m. to 4:43 p.m.) 17 THE VIDEOGRAPHER: We're back on the 18 record. Time is 4:43. 19 Q. (BY MR. STONE) Before, just as we were 20 going on break, you said that you had a correction to 21 an answer that you gave to a prior question. Do you 22 recall that? 23 A. I do. It wasn't a correction. It was -- I 24 was going to add something, and I've decided it 25 doesn't add anything to it, so I'll just leave it as</p>	<p style="text-align: right;">240</p> <p>1 Have you heard the term "highway of 2 commerce" used in relation to this case? 3 A. I have not. 4 Q. Do you have an opinion on whether or not the 5 Rio Grande River from mile marker 275 to 610 is a 6 highway of commerce? 7 A. That's not in my area of expertise. I 8 wouldn't feel good offering an opinion on that. 9 Q. Next I want to go to page 27 of your expert 10 report. 11 A. I'm there. 12 Q. Actually, before we move on, I want to ask 13 another follow-up question. What is the necessary 14 depth -- what is the minimum necessary depth for a 15 vessel carrying commercial cargo, in your opinion? 16 A. I've never seen a definition for that. 17 Q. So is it fair to say that you don't have an 18 opinion on what is the minimum necessary depth of 19 water for vessels carrying commercial cargo? 20 A. That's correct. 21 Q. You mentioned that you've traveled up and 22 down the Mississippi River, right? 23 A. Yes, I have. 24 Q. What is the -- is there a minimum -- is 25 there a minimum depth that the Mississippi River is</p>
<p style="text-align: right;">239</p> <p>1 it is. 2 Q. Okay. I have a couple of questions I wanted 3 to circle back on. 4 Does the Coast Guard define 5 "navigability" the same as the U.S. Army Corps of 6 Engineers? 7 A. I don't know. 8 Q. Is it fair to say that in your opinion, if 9 the U.S. Army Corps of Engineers says that a water is 10 a navigable water of the United States, then they 11 can't be wrong? 12 A. I would accept it. As a professional 13 mariner, if the Army Corps said something was a 14 navigable water, I would accept it as navigable. 15 Q. Does the same apply to the Coast Guard? 16 A. Yes. 17 Q. Have you ever heard the term "highway of 18 commerce" before? 19 A. Yes. 20 Q. Where have you heard the term "highway of 21 commerce"? 22 A. I don't know. Just in conversation over the 23 years. 24 Q. When is the last time you heard the term -- 25 strike that.</p>	<p style="text-align: right;">241</p> <p>1 maintained at? 2 A. That all depends on stage of the river. I 3 know they dredge it to keep it at a certain level, 4 but I don't know -- I don't know the answer to that 5 question. 6 Q. You mentioned a number of -- earlier in the 7 day we were asking about some post-dredging 8 waterways. Do you recall that? 9 A. I do. 10 Q. And the minimum depth of all those waterways 11 that you could recall post-dredging was 30, 30 feet 12 deep, right? 13 A. Of the ones that we discussed, yes. 14 Q. And those waterways that we discussed 15 post-dredging were they able to handle commercial 16 traffic? 17 A. They were. We have docks in Tampa Bay that 18 handle commercial traffic that have a draft 19 restriction of 14 feet. 20 Q. 14 feet? Is that -- would you say that 21 that's -- based on your experience as a mariner in 22 the United States that that's pretty normal? 23 A. What do you mean by that? 24 Q. Pretty normal as in having a draft of 25 14 feet?</p>

<p style="text-align: right;">242</p> <p>1 A. I don't understand your question as to 2 what -- what do you mean by "normal." There's -- 3 different docks have different -- and different 4 channels have different depths. 5 Q. Sure. So let me clarify since you brought 6 up Tampa Bay. There is commercial navigation that 7 occurs in Tampa Bay. Would you agree? 8 A. Yes. 9 Q. And the minimum depth in Tampa Bay is 10 14 feet? 11 A. No. The minimum depth in Tampa Bay is zero 12 feet in places. But if you're talking about 13 maintaining channels, maybe 12 feet or so, and it all 14 depends on the stage of the tide and where you're 15 going, yes. 16 Q. Okay. So the minimum depth in -- strike 17 that. 18 So the depth of the water in Tampa Bay 19 in the channel is 12 feet approximately? 20 A. No, the depth of the water in the majority 21 of the channel in Tampa Bay is 44 feet. 22 Q. Okay. Have you ever operated -- you know 23 what, let's take this piece by piece. 24 Have you ever operated a commercial 25 vessel -- strike that, strike that.</p>	<p style="text-align: right;">244</p> <p>1 circumstances. Approximately how long ago was that, 2 that you piloted that vessel in the 12 feet of water 3 that was carrying commercial cargo? 4 A. Within the last six to eight years. 5 Q. And it's fair to say that you've never 6 operated a vessel carrying commercial cargo in less 7 than 12 feet of water, right? 8 A. Well, I've operated vessels not as a pilot, 9 but commercial vessels in probably six to eight feet 10 of water on the Ohio -- in portions of the Ohio 11 River. 12 Q. What cargo were those vessels carrying in 13 this six to eight feet of water? 14 A. They were not carrying cargo, but they were 15 commercial vessels. 16 Q. Okay. So I'm not asking just about 17 commercial vessels. I want to know about cargo 18 carrying -- 19 A. Okay. 20 Q. -- vessels. What is -- is it fair to say 21 that the -- you have not operated a vessel carrying 22 commercial cargo in less than 12 feet of water? 23 A. That's correct. 24 Q. Does the Corps of Engineers maintain a 25 9-foot channel in the upper Mississippi River?</p>
<p style="text-align: right;">243</p> <p>1 Have you ever operated a vessel carrying 2 commercial cargo? 3 A. When you say "operated," do you mean 4 piloted? 5 Q. Correct. 6 A. Yes, I have. 7 Q. When is the last time that you piloted a 8 vessel that was carrying commercial cargo? 9 A. Two years ago. 10 Q. Where was that? 11 A. In Tampa Bay. 12 Q. In Tampa Bay. What is the smallest body of 13 water that you have operated a vessel -- strike that. 14 Let's use piloted. What is the smallest 15 body of water that you have piloted a vessel carrying 16 commercial cargo? 17 A. Can you define -- 18 THE REPORTER: I'm sorry? 19 A. Can you define "smallest body of water"? 20 I'm not sure what you mean by that. 21 Q. I mean depth. 22 A. Oh, depth. Okay. 12 feet. 23 Q. And what was the -- what was the width of -- 24 oh, okay. 25 What was the -- let's dig into the</p>	<p style="text-align: right;">245</p> <p>1 A. I don't know exactly what their 2 controlling -- their project depths are up there, but 3 I know they're somewhere in that area. 4 Q. I'm just curious. What was the cargo that 5 was on the vessel that you were operating in the 6 12 feet of water? 7 A. It was on a ship -- we used to call them 8 island hoppers. They're very small ships frequently. 9 They are like supply boats that used to work in the 10 oilfield, that then they go down to the Caribbean and 11 to Honduras and so forth. 12 And coming up, they carry tomato stakes. 13 What that means is sticks that farmers use to drive 14 into the ground so that the tomatoes can climb up 15 them as they grow. And I guess they're probably 16 cutting down ancient trees in Honduras to make those. 17 And then return cargo is used cars and 18 bicycles and anything that somebody in Central 19 America or the Caribbean on one of the islands might 20 need. 21 Q. Is it fair to say that you have not operated 22 a vessel carrying commercial cargo on the Rio Grande 23 River from mile marker 275.5 to mile marker 610? 24 A. Yes. 25 Q. Have you ever heard of anybody who has?</p>

<p style="text-align: right;">246</p> <p>1 A. No. I've read -- I've read that they used 2 to carry -- yeah, the fur trappers used to transport 3 furs down through that area. But that was a long 4 time ago. 5 Q. It sounds like you've been involved in 6 some -- you were describing it -- some international 7 shipping. Is that accurate? 8 A. Most of the ships that I would pilot are 9 international vessels. 10 Q. When you engage in international shipping, 11 that means the transport of goods from one country to 12 another, do you have to bring those goods through a 13 part of entry? 14 A. Well, I'm not precisely sure of what a -- 15 the definition of a port of entry is. I know that in 16 all the ports that accept ships from international -- 17 from other countries always have a customs and border 18 patrol and agriculture and immigration and all that 19 department within that. If that constitutes a port 20 of entry, then I would say yes, so... 21 Q. I'm going to go back to the Rio Grande River 22 and ask a question about bank-to-bank transfers. 23 You mentioned that you were in an 24 airboat when you were down there yesterday, right? 25 A. Yes.</p>	<p style="text-align: right;">248</p> <p>1 Q. But when you eng -- you have engaged in 2 international shipping, and there's inspections and 3 things like that that occur when you offload goods 4 into a different country, aren't there? 5 A. Yes. 6 Q. Did you observe any bank-to-bank commercial 7 activity during either of your site visits to the 8 location of the buoys? 9 A. No. 10 Q. Okay. I took to you page 27 of your expert 11 report, and now I'm actually going to ask you a 12 question about it. 13 Earlier I asked you to define what an 14 obstacle is. Do you recall that? 15 A. I do. 16 Q. Actually, before I move on, I'm -- I've got 17 one or two follow-up questions on that. 18 You mentioned Alafia river, right? 19 A. Yes. 20 Q. And I think you've -- talk about in your 21 report how that's the closest in terms of being 22 comparable to the Rio Grande River. Do you recall 23 that? 24 A. I don't recall making that statement, no. 25 Q. Okay. Is the Alafia River used for</p>
<p style="text-align: right;">247</p> <p>1 Q. And an RVSD, right? 2 A. Yes. 3 Q. If you had -- let's -- my hypothetical, 4 okay? Let's say you dock on the U.S. side. 5 A. Okay. 6 Q. And you filled your RVSD up with some kind 7 of commercial cargo. Let's say avocados, okay? Do 8 you know how many avocados you think you could have 9 loaded up into the RVSD? 10 A. No idea. 11 Q. For the purposes of this hypothetical, let's 12 say that you have basket of avocados. Could you, 13 from the RVSD that you were in yesterday, carrying 14 your basket of avocados, have navigated the boat over 15 to the Mexican bank and unloaded your cargo? 16 A. Yes. I'm not saying it would be legal to do 17 that. 18 Q. And that's where I'm going with this. So 19 you physically could, right? 20 A. Yes, physically. 21 Q. But it wouldn't be legal, would it? 22 A. Unless it was an established trade route, I 23 guess, that had a port of entry on the other side or 24 whatever. That's certainly well out of my scope of 25 expertise.</p>	<p style="text-align: right;">249</p> <p>1 commercial traffic? 2 A. Yes. 3 Q. What is the depth of the Alafia River? 4 A. Presently, in the vicinity of 30 or 32 feet. 5 Q. Would that -- would you need to have a 6 similar depth on the Rio Grande River to engage in 7 commercial traffic? 8 A. Absolutely not. 9 Q. In your opinion, are the buoys -- and by 10 that I mean the buoys as well as the concrete that is 11 associate with them. In your opinion, are they an 12 obstacle? 13 A. Yes. 14 Q. Why? 15 A. Well, as presently configured, they would be 16 an obstacle for airboats because they're something 17 that you have to go around. It may impede your 18 progress a little bit, but you can surmount it and 19 you can go around and make it. Particularly, if 20 you're trying to go from one side of the river to the 21 other, you have to go around the end of it to get 22 into it. 23 On the RVSD, they can't -- can be an 24 obstacle, depending upon the stage of the river, as 25 it wasn't -- not an obstacle -- I'm sorry -- an</p>

<p style="text-align: right;">250</p> <p>1 obstruction as it was for us yesterday.</p> <p>2 Q. Well, we'll get to obstructions. First I</p> <p>3 want to stick with obstacles and work our way there.</p> <p>4 You wrote that a buoy is an obst --</p> <p>5 could be an obstacle?</p> <p>6 A. Yes.</p> <p>7 Q. You said that a channel marker can be an</p> <p>8 obstacle, right?</p> <p>9 A. Yes.</p> <p>10 Q. A wreck could be an obstacle?</p> <p>11 A. Yes.</p> <p>12 Q. Could a balloon be an obstacle?</p> <p>13 A. If you didn't want to touch it.</p> <p>14 Q. Basically, anything in the water could</p> <p>15 constitute an obstacle because you would have to go</p> <p>16 around it in your boat?</p> <p>17 A. That's correct.</p> <p>18 Q. A person could be an obstacle?</p> <p>19 A. Yes.</p> <p>20 Q. A trash bag could be on obstacle if you</p> <p>21 didn't want to -- if you didn't want to -- if you had</p> <p>22 to maneuver around it?</p> <p>23 A. Yes. If you didn't want to take a chance of</p> <p>24 fouling your propeller.</p> <p>25 Q. When you were visiting the Rio Grande River,</p>	<p style="text-align: right;">252</p> <p>1 A. Yes.</p> <p>2 Q. Okay. I'm going to read you that first</p> <p>3 sentence, and I'm then I'm going to ask this question</p> <p>4 again. We're going to go back through this.</p> <p>5 You wrote, "An obstruction is something</p> <p>6 that completely clogs or blocks a passage." Did I</p> <p>7 read that correctly?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. And then you go on to the next</p> <p>10 sentence and wrote -- and write, "If there is</p> <p>11 something in a channel or river that cannot be</p> <p>12 maneuvered around, it is an obstruction." Did I read</p> <p>13 that correctly?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So I'm going to ask again, do the</p> <p>16 buoys in this case constitute an obstruction in your</p> <p>17 opinion?</p> <p>18 MR. LYNK: Object to form.</p> <p>19 A. If you are trying to get to the bank that's</p> <p>20 within the floating barrier and the U.S. bank and</p> <p>21 you're in a vessel such as that RVSD, yes, it could</p> <p>22 create an obstruction and not allow you to get to it.</p> <p>23 Q. (BY MR. STONE) So it's your testimony today</p> <p>24 that the buoys obstruct -- well, let's do it by boat.</p> <p>25 So there's only two boats we've talked about today</p>
<p style="text-align: right;">251</p> <p>1 your two site visits, did you notice any debris in</p> <p>2 the river?</p> <p>3 A. Yes.</p> <p>4 Q. Would that debris constitute an obstacle?</p> <p>5 A. Most of it would be something you would just</p> <p>6 go through and not go around. But if it's large</p> <p>7 enough, depending upon the size of your boat, yes, it</p> <p>8 would constitute an obstacle.</p> <p>9 Q. So now I want to talk about obstructions.</p> <p>10 Earlier you defined an obstruction, so we don't have</p> <p>11 to do that again. I'll cut to the chase.</p> <p>12 In your opinion, are the buoys and the</p> <p>13 associated concrete blocks an obstruction?</p> <p>14 A. Yes. Well -- yes.</p> <p>15 Q. It seems like you said "yes," but you were</p> <p>16 going to qualify that.</p> <p>17 A. No, I was trying to -- I was thinking</p> <p>18 through it, and I was -- I answered my own question.</p> <p>19 Q. Do the buoys obstruct vessels from traveling</p> <p>20 up and down the Rio Grande River?</p> <p>21 A. They do between the buoys and the U.S. bank.</p> <p>22 Q. Okay. So we're on page 27 of your report.</p> <p>23 A. Yes.</p> <p>24 Q. Do you see under D where it says,</p> <p>25 "Obstructions"?</p>	<p style="text-align: right;">253</p> <p>1 around the buoys, the RVSD and the airboat, right?</p> <p>2 A. Yes.</p> <p>3 Q. And is that the full scope of boats that</p> <p>4 we're talking about that -- around the buoys in this</p> <p>5 case?</p> <p>6 A. That we have discussed, yes.</p> <p>7 Q. Are there any other boats that we haven't</p> <p>8 discussed that travel around these buoys that you're</p> <p>9 aware of?</p> <p>10 A. Well, I saw johnboats and some other small</p> <p>11 recreational boats and fishing boats on the river</p> <p>12 while I was there.</p> <p>13 Q. What is a johnboat?</p> <p>14 A. A johnboat is a small -- generally small</p> <p>15 blunt bowed vessel, rectangular in shape, and it's</p> <p>16 got a slight rise in the bow. One -- probably the</p> <p>17 simplest of boats and least expensive boats. Can be</p> <p>18 rowed or powered.</p> <p>19 Q. What is the minimum depth you need to</p> <p>20 operate a johnboat?</p> <p>21 A. Six inches, a foot maybe. If it has an</p> <p>22 engine, 18 inches. 18 inches to two feet.</p> <p>23 Q. All right. So we've got johnboats,</p> <p>24 airboats, and RVSDs?</p> <p>25 A. And kayaks. I did not see any, but the</p>

<p style="text-align: right;">254</p> <p>1 canoes perhaps.</p> <p>2 Q. Did you see kayaks while you were there?</p> <p>3 A. I did not. I am aware that previously there</p> <p>4 was a kayak charter business there at Shelby Park,</p> <p>5 and it's no longer there at this time.</p> <p>6 Q. So there's no -- you're not aware of any</p> <p>7 kayaking that takes place where the -- currently</p> <p>8 where the buoys are located?</p> <p>9 A. I'm not personally aware of it, no.</p> <p>10 Q. Are you aware of any canoe activity in the</p> <p>11 location where the buoys are --</p> <p>12 A. I did not see canoes, no.</p> <p>13 Q. Let's go through each of these.</p> <p>14 Would the buoys obstruct a canoe</p> <p>15 traveling up or down the Rio Grande River?</p> <p>16 A. No.</p> <p>17 Q. Would a -- okay. Would the buoys obstruct a</p> <p>18 kayak traveling up and down the Rio Grande River?</p> <p>19 A. I would like to go back to my previous</p> <p>20 answer, because I am not certain of how low the river</p> <p>21 can get. But if it could get -- well, never mind.</p> <p>22 Q. Yeah, so I don't want to -- I don't want you</p> <p>23 to try to think of scenarios where it would --</p> <p>24 (Simultaneous talking).</p> <p>25 Like, I mean, if there was no water in</p>	<p style="text-align: right;">256</p> <p>1 Q. Approximately?</p> <p>2 A. Well, the lowest point was --</p> <p>3 Q. Strike that. You said negative.</p> <p>4 A. Negative, yeah.</p> <p>5 Q. You actually said that it's negative feet at</p> <p>6 the lowest point.</p> <p>7 And there was -- you were still able to</p> <p>8 ride an airboat down the Rio Grande River where the</p> <p>9 buoys are located, right?</p> <p>10 A. Yes.</p> <p>11 Q. So would you agree with me that the buoys</p> <p>12 are not an obstruction to airboats traveling up and</p> <p>13 down the Rio Grande River?</p> <p>14 A. Yes.</p> <p>15 Q. Even at negative water levels, right?</p> <p>16 A. Well, I don't know how extreme that negative</p> <p>17 gets, but it could be on the U.S. side or the</p> <p>18 barrier, but I'm not certain.</p> <p>19 Q. Are the buoys an obstruction for traveling</p> <p>20 up and down the Rio Grande River in an RVSD?</p> <p>21 A. It was yesterday.</p> <p>22 Q. Are the buoys an obstruction to traveling up</p> <p>23 and down the Rio Grande River in a johnboat?</p> <p>24 A. I don't know how to answer this question</p> <p>25 because I don't want to give hypotheticals. I'm not</p>
<p style="text-align: right;">255</p> <p>1 it, then no vessel could navigate it.</p> <p>2 A. Yes.</p> <p>3 Q. Don't go too far down the -- I just want to</p> <p>4 know what you're aware --</p> <p>5 A. Yes.</p> <p>6 Q. -- of, what you've actually observed and</p> <p>7 what you're aware of.</p> <p>8 A. Yes, sir.</p> <p>9 Q. Based on your observations and the</p> <p>10 information that you've reviewed in this case, do you</p> <p>11 believe that a kayak could -- strike that.</p> <p>12 Would the -- do the buoys obstruct</p> <p>13 kayaks from moving up and down the Rio Grande River?</p> <p>14 A. No.</p> <p>15 Q. Do the buoys obstruct airboats moving up and</p> <p>16 down the Rio Grande River?</p> <p>17 A. I do not know.</p> <p>18 Q. But it's fair to say that the buoys did not</p> <p>19 obstruct airboats moving up and down the Rio Grande</p> <p>20 River on either of the visits that you made?</p> <p>21 A. That's correct.</p> <p>22 Q. So even at 18 -- strike that.</p> <p>23 I think you said yesterday the water</p> <p>24 level at the lowest point was two feet?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">257</p> <p>1 certain how low the river could be, but it would not</p> <p>2 surprise me if the river could get two feet lower</p> <p>3 than it is -- was yesterday, and in that case the</p> <p>4 answer would be yes.</p> <p>5 Q. So I just want to -- let me give you a</p> <p>6 hypothetical. Let's go with that RVSD -- with the</p> <p>7 RVSD.</p> <p>8 If you were half a mile upstream of the</p> <p>9 buoys near Eagle Pass in an RVSD and you wanted to go</p> <p>10 down the river to a half a mile past the buoys, would</p> <p>11 you be able to accomplish that?</p> <p>12 A. Yes.</p> <p>13 Q. Why?</p> <p>14 A. You would go over on the Mexican side of the</p> <p>15 barrier.</p> <p>16 Q. And that's true for every vessel that we've</p> <p>17 talked about, right?</p> <p>18 A. Yes.</p> <p>19 Q. So you would agree with me that the buoys</p> <p>20 are not an obstruction for anyone traveling -- with</p> <p>21 the goal of traveling up or down the Rio Grande</p> <p>22 River?</p> <p>23 A. As presently configured, no.</p> <p>24 Q. Because you could just pass the buoys on the</p> <p>25 side closest to the Mexican waters, right?</p>

<p>258</p> <p>1 A. Correct.</p> <p>2 Q. So when you testi -- when you write in your</p> <p>3 report that it is an obstruction, what you mean is</p> <p>4 it's only an obstruction if you only wanted to pass</p> <p>5 them on the side closest to the U.S. bank under</p> <p>6 certain conditions?</p> <p>7 A. As presently configured, yes.</p> <p>8 Q. Next I want to go to page 28 of your report.</p> <p>9 The question on this question number 6 out of 7, "Is</p> <p>10 the marine floating barrier a hazard to navigation?"</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. And what is your conclusion about whether or</p> <p>14 not the buoys constitute a hazard to navigation?</p> <p>15 A. That they do.</p> <p>16 Q. Why do you think they constitute a hazard to</p> <p>17 navigation?</p> <p>18 A. Because the location of their mooring blocks</p> <p>19 are not indicated, and, as far as I know, there's no</p> <p>20 information available to a boater that would give a</p> <p>21 description of that. So, certainly, they could pass</p> <p>22 too close, not knowing that. And they're not</p> <p>23 lighted, so a boat could strike them at night.</p> <p>24 So, yes, I think they're a hazard to</p> <p>25 navigation.</p>	<p>260</p> <p>1 throughout the transcript unfortunately.</p> <p>2 Now this portion of the -- am I correct</p> <p>3 that this is the portion of the expert report that</p> <p>4 you had to correct in your supplemental because</p> <p>5 there's -- some of the data was inaccurate in this?</p> <p>6 A. The weight of the positioning mooring</p> <p>7 anchors was incorrect.</p> <p>8 Q. Now, the buoys have been in the Rio Grande</p> <p>9 River since last summer, right?</p> <p>10 A. Yes.</p> <p>11 Q. It's been almost 12 months, right?</p> <p>12 A. Yes.</p> <p>13 Q. And earlier you testified the only instance</p> <p>14 that you're familiar with of anybody in a vessel</p> <p>15 making contact with the buoys was during that site</p> <p>16 visit that you had in February, right?</p> <p>17 A. That I am familiar with, yes.</p> <p>18 Q. Earlier you testified that one of the boat</p> <p>19 operators during that first site visit told you that</p> <p>20 if there's any damage done to the boats they have to</p> <p>21 create a record of it. Do you recall that?</p> <p>22 A. If there's damage done to the boat, yes.</p> <p>23 Q. Are you familiar with any reports of vessels</p> <p>24 being damaged by the buoys?</p> <p>25 A. A recreational boater would not have to</p>
<p>259</p> <p>1 Q. Okay. So I got three -- it sounded like</p> <p>2 there were three reasons that you just gave. The</p> <p>3 first is that there is no indication of the width, so</p> <p>4 an individual could mistakenly belie -- mistakenly</p> <p>5 hit -- make contact with the concrete blocks. Was</p> <p>6 that -- is that accurate as to the first reason that</p> <p>7 they constitute a hazard to navigation?</p> <p>8 A. Yes, no indication of the concrete blocks.</p> <p>9 Q. But you did testify earlier that that's</p> <p>10 something that the standard of care requires mariners</p> <p>11 to be familiar with, right, as they operate around</p> <p>12 the buoys?</p> <p>13 A. I'm not understanding your question. I</p> <p>14 don't -- being familiar with what is the standard of</p> <p>15 care?</p> <p>16 Q. Being familiar with the actual width of the</p> <p>17 concrete barriers that are supporting the buoys such</p> <p>18 that your craft does not make contact with them?</p> <p>19 A. Well, it took me an awful lot of research to</p> <p>20 get that information myself. I'm not sure how a</p> <p>21 commercial vessel operator or a recreational boater</p> <p>22 would ever get that. So how would they have a</p> <p>23 standard of care if information is not available?</p> <p>24 Q. Hm. Okay. Let me -- I apologize for saying</p> <p>25 "okay" so much. It's a tic I have. It will be</p>	<p>261</p> <p>1 report that damage. I don't know who they would</p> <p>2 report that to.</p> <p>3 Q. Let's set aside recreational boaters. I'm</p> <p>4 asking about CBP --</p> <p>5 A. Okay.</p> <p>6 Q. -- and specifically about CBP.</p> <p>7 A. Okay.</p> <p>8 Q. Are you familiar with any reports by CBP of</p> <p>9 any of their vessels being damaged by making contact</p> <p>10 with the buoys?</p> <p>11 A. I would not have access to that information,</p> <p>12 so the answer is no.</p> <p>13 Q. Is that not information that you could be --</p> <p>14 you could have been provided in this case?</p> <p>15 A. I suppose if I had asked for it, but I'm not</p> <p>16 sure that they would share that information.</p> <p>17 Q. So let me get this straight. You're</p> <p>18 rendering opinions in this case about the buoys being</p> <p>19 a hazard to navigation, but you didn't ask for any</p> <p>20 records about whether or not any vessels had been</p> <p>21 damaged by making contact with the buoys over the</p> <p>22 past year. Is that accurate?</p> <p>23 A. That is, yes.</p> <p>24 Q. And I believe you also testified that you</p> <p>25 didn't ask any of the CBP personnel during your site</p>

<p style="text-align: right;">262</p> <p>1 visits if they were familiar with any vessels making 2 contact with the buoys. Is that accurate as well? 3 A. That's correct. 4 Q. So you had absolutely no curiosity as to 5 whether or not the buoys had actually harmed any 6 vessels due to their placement despite having an 7 opinion that they constituted a hazard to navigation. 8 Is that fair? 9 MR. LYNK: Object to form. 10 A. Yes, you can have a hazard to navigation 11 that has not yet caused a problem. And I'm not 12 saying that it hasn't yet caused a problem; it's just 13 that I'm not aware of it. But if it creates a 14 hazard, it's a hazard, whether there's a record of 15 previous incidents or not. 16 Q. (BY MR. STONE) Okay. So in your opinion 17 it's a hazard and it doesn't matter if a boat has 18 never -- even though it's been there a year, a boat 19 has never made any contact with it? 20 MR. LYNK: Object to form. 21 A. Repeat the question please. 22 Q. (BY MR. STONE) So in your opinion it's a 23 hazard, regardless of whether there's ever been an 24 instance of a boat or a vessel making contact with 25 it?</p>	<p style="text-align: right;">264</p> <p>1 you give is that there's no lights on the buoys, 2 right? 3 A. Correct. 4 Q. That's a hazard. But you also testified 5 that no reasonable mariner would operate a vessel at 6 nighttime in the area of the Rio Grande around the 7 buoys, right? 8 A. I don't believe I used those words. I said 9 I would not. A fisherman in a johnboat may be very 10 comfortable in doing so. 11 Q. Are you familiar with -- strike that. 12 Are you aware of any boats at all, 13 recreational or federal, operating in the vicinity of 14 the buoys at night? 15 A. No, I'm not. 16 Q. Is that information that you'd, you know, 17 want to know if you're testifying that without lights 18 the buoys constitute a hazard? 19 A. I can tell you that the buoys, without 20 lights, constitute a hazard, just because somebody 21 could be out there. Whether it made sense for them 22 to be or not, whether that happens every night or 23 once a year or once every two years, it's still a 24 hazard. 25 An analogy that keeps popping into my</p>
<p style="text-align: right;">263</p> <p>1 A. Yes. 2 Q. And that's why you didn't bother to ask if 3 there were any instances of it actually causing 4 damage to a vessel? 5 MR. LYNK: Object to form. 6 A. Frankly, it didn't occur to me to ask. 7 Q. (BY MR. STONE) Is that information that you 8 think would have been relevant to the conclusions 9 that you made in this case? 10 MR. LYNK: Object to form. 11 A. No. I still think it's a hazard to 12 navigation. 13 Q. (BY MR. STONE) So it's fair to say, 14 regardless of whether or not a vessel made -- 15 actually would -- strike that. 16 It's fair to say that regardless of the 17 answer of whether or not a vehicle -- a vehicle? -- 18 a vessel has been damaged by making contacts -- 19 contact with the buoys, it wouldn't impact your 20 opinions in this case; like you said earlier, you 21 have been unwavering in your opinion since the fall 22 2023, right? 23 MR. LYNK: Object to form. 24 A. I -- yes. 25 Q. (BY MR. STONE) Okay. So the next instance</p>	<p style="text-align: right;">265</p> <p>1 mind is there's a wire that crosses a bicycle path, 2 and people know about it, and they duck underneath 3 it, and it doesn't hit them. And nobody has been 4 injured yet. That wire would still be a hazard. 5 Q. But it wouldn't be a hazard if nobody rode 6 bikes on that path. 7 MR. LYNK: Object to form. 8 Q. (BY MR. STONE) Right? 9 A. No. 10 Q. Just like these buoys without lights are not 11 a hazard if nobody operates boats -- operates vessels 12 there at night, right? 13 MR. LYNK: Object to form. 14 A. Yes. 15 Q. (BY MR. STONE) Isn't it fair to say, 16 without knowing whether or not boats actually operate 17 in that vicinity at night, you can't determine that 18 the buoys are a hazard unless they have lights 19 attached? 20 A. If no boats travel on that -- the river in 21 the vicinity of the barrier, then it would not create 22 a hazard at night, if they don't travel at night. 23 Q. You also mentioned a -- I'm on page 30 of 24 your expert report, final paragraph of Section 6. 25 Long day, so I apologize for slurring words.</p>

<p style="text-align: right;">266</p> <p>1 There's a mention of a Jeremy Hall here, 2 Supervisory Hydrologic Technician for the U.S. IBWC. 3 A. I do, but it's Jeremy Wall, not Hall. 4 Q. Jeremy Wall. Did you actually speak with 5 Jeremy Wall? 6 A. No, I did not actually speak with him. This 7 was reported to me. 8 Q. Reported to you by who? 9 A. By an answer to one of those questions that 10 I submitted to be answered. 11 Q. Okay. Next I want to talk about -- well, 12 before I move on, what does Jeremy Wall say about 13 whether or not the buoys constitute an obstruction? 14 A. It says that the floating marine barrier 15 greatly diminishes the quality of the measurements 16 that his team takes and that they need to measure the 17 full channel width and that anything in the channel 18 would prevent them from doing this, if they could not 19 go over or around it. 20 Q. That's not really what he says, is it. Let 21 me -- let me read the quote. 22 A. Okay. 23 Q. He says, "All" -- so the question you asked 24 him was, "Does the marine floating barrier affect his 25 team while they're performing their duties?" And the</p>	<p style="text-align: right;">268</p> <p>1 obstruction, right? 2 A. Yeah, that's -- 3 Q. Can you go -- can you take an airboat and go 4 around the buoys? The answer is, yes, you took an 5 airboat and went around the buoys, right? 6 MR. LYNK: Are you going to answer for 7 him or let him answer your first question? 8 A. The question -- the answer to if an airboat 9 could do it is yes, but he don't specify doing it 10 with an airboat. 11 Q. (BY MR. STONE) And the next portion here 12 says, "greatly" -- "or greatly diminishes the quality 13 (can maneuver closely around but you cannot measure 14 the water underneath or directly near the structure) 15 of the measurement." Did I read that correctly? 16 A. Yes. 17 Q. And you were literally on an airboat 18 yesterday that pulled up adjacent to the buoys and 19 they stuck a pole in the water and measured its 20 depth, right? 21 A. In one area that was 30 feet past the end of 22 the barrier. And there's a big difference between 23 sticking a boathook over the side and getting an 24 approximate idea -- can you touch the bottom or 25 not -- and doing accurate measurements.</p>
<p style="text-align: right;">267</p> <p>1 response is -- and tell me if I'm reading this 2 accurately, quote, "All measuring utilizes the full 3 channel width (varies by river height), anything in 4 the channel would prevent (if could not go over or 5 around) or greatly diminish the quality (can maneuver 6 closely around but could not measure the water 7 underneath or directly near the structure) of the 8 measurement," unquote. Did I read that accurately? 9 A. Yes. 10 Q. Nothing in this quoted sentence says that 11 the buoys have impaired the ability of USIBWC to 12 perform their duties, right? 13 MR. LYNK: Object to form. 14 A. No, I disagree. I think it's exactly what 15 he's saying there. He says that anything that's in 16 the way -- my editorializing -- such as the barrier 17 that does not allow them to do the entire width of 18 the river would affect the quality of their ability 19 to do measurements. 20 Q. (BY MR. STONE) He says here -- just -- 21 okay. He says, "Anything in the channel that would 22 prevent (if you could not go over or around)." Let's 23 start there, right? That's what he says. 24 Anything in the river that would prevent 25 you from going over or around it could be an</p>	<p style="text-align: right;">269</p> <p>1 Q. Does this -- does Jerry Wall say anywhere in 2 this sentence that IBWC are unable to measure the 3 water near the buoys? 4 A. The way I interpret this is he was asked 5 does -- if the marine floating barrier affected his 6 team while performing their duties. 7 His response is -- and I'll say it with 8 emphasis -- is "All measurements utilize the full 9 channel width. Anything in the channel would prevent 10 or greatly diminish the quality around -- of the 11 measurement." And maybe he's -- you and I have a 12 different understanding of what his answer states. 13 His answer is like, "Yes, of course it's in the way. 14 It's -- anything that blocks us from doing this 15 affects the accuracy of the measurement or -- the 16 measurement. So, yeah, I -- we can go back and forth 17 on this, but I still interpret it completely 18 differently than you are. 19 Q. I understand. So I'm interpreting it as a 20 general response, not specific to the buoys, but a 21 general response about how IBWC conducts operations 22 on the Rio Grande River. 23 A. But if you read the statement, it says, "was 24 asked if the marine floating barrier affected his 25 team." And he says anything that gets in the way</p>

<p>270</p> <p>1 affects the measurement. So I think he answered it 2 very clearly.</p> <p>3 Q. I think we have -- it's fair to say -- and 4 since neither of us have talked to Jerry Wall, isn't 5 it fair to say that we're both just reading into what 6 we think this quote means?</p> <p>7 MR. LYNK: Object to form.</p> <p>8 A. I feel that it answers the question very 9 clearly. I will say I will agree to disagree with 10 you on the -- what the meaning of that statement is.</p> <p>11 Q. (BY MR. STONE) Did you ask that question 12 specifically to Jerry Wall?</p> <p>13 A. I asked that question -- if that question 14 could be conveyed to the CBP and other people 15 operating in a official capacity on that section of 16 the river, and it was conveyed to the appropriate -- 17 to the authorities, the managers, supervisors of the 18 different teams there and answered and provided back 19 to me.</p> <p>20 Q. Okay. So is it fair to say you don't know 21 if the question that was given to Jerry Wall was 22 exactly as you asked, "If the marine floating barrier 23 affected his team while performing their duties."</p> <p>24 MR. LYNK: Object to form.</p> <p>25 A. I was not present. I presume that my</p>	<p>272</p> <p>1 your opinion here that the -- that the buoys are a 2 hazard to navigation, right?</p> <p>3 A. No. I rely upon it, that the buoys impact 4 the operations of the people working in that area, 5 not -- the question of whether or not it is a hazard 6 to navigation, in this -- this question was not 7 answered -- was not asked, rather.</p> <p>8 Q. Even though -- so it's in the Hazard to 9 Navigation section of your report, but it sounds 10 like -- are you saying that it more appropriately 11 belongs in a different portion of your report?</p> <p>12 A. I would have to look at that and see whether 13 it's in context or not, so.</p> <p>14 Q. Ultimately, the responses that you got back 15 from the unknown CBP personnel, this complete 16 stranger, ultimately all it did, though, was bolster 17 the opinions that you already had about the buoys, 18 fair?</p> <p>19 A. That is correct. And I would like to say 20 that they're not -- presumably they're not unknown 21 people; they are unknown to me, but they're known to 22 the supervisors that these questions were given to.</p> <p>23 Q. Well, I'll represent to you that they are to 24 me too.</p> <p>25 A. Okay.</p>
<p>271</p> <p>1 questions were given to him and -- as they are, yes. 2 I'm making an assumption, but, of course I don't 3 know. I wasn't there.</p> <p>4 Q. (BY MR. STONE) Let's go up to the prior 5 paragraph just before that, starting on page 29 and 6 going on to page 30.</p> <p>7 It says, "CBP personnel, who, quote, 8 'observed the installation daily to report up chain 9 of command the state of Texas -- state of Texas' 10 progress stated that they had seen" -- I'll just stop 11 there. Do you see that sentence?</p> <p>12 A. I do.</p> <p>13 Q. Do you know who those CBP personnel are?</p> <p>14 A. I do not know specifically, no.</p> <p>15 Q. This is just based on the answers that your 16 lawyers returned back to you, right?</p> <p>17 A. Yes.</p> <p>18 Q. It's that interview notes that we looked at 19 as Timmel Exhibit 7, right?</p> <p>20 A. I forget the exhibit number, but we 21 discussed this earlier, yes.</p> <p>22 Q. So we don't know who it was at CBP who 23 allegedly answered that question, right?</p> <p>24 A. I do not know personally, no.</p> <p>25 Q. But you're relying on it as the basis for</p>	<p>273</p> <p>1 Q. I don't know who they are either.</p> <p>2 Same question for Jeremy Wall. It's 3 fair to say that irrespect -- that Jeremy Wall's 4 response here that we -- we're reading in your report 5 ultimately it just bolstered the opinion that you 6 already had about the buoys, fair?</p> <p>7 A. Fair.</p> <p>8 Q. Final section, Question 7: "Do the marine 9 floating barriers diminish the navigable capacity of 10 the Rio Grande?" And we start with Rule 6, Safe 11 Speed.</p> <p>12 What did you conclude about the buoys -- 13 excuse me -- as it relates to the navigable capacity 14 of the Rio Grande River at safe speeds?</p> <p>15 A. That when vessels are operating in the 16 vicinity of the barrier that they -- in order to 17 operate at a safe speed, they will have to operate at 18 a reduced speed and/or fewer number of vessels -- 19 well, actually, that comes under Risk of Collision, 20 so.</p> <p>21 THE REPORTER: That comes under what?</p> <p>22 THE WITNESS: Risk of Collision. That's 23 another rule that's discussed later on.</p> <p>24 Q. So it's your testimony that you have to 25 operate around the buoys at a slower speed than if</p>

<p style="text-align: right;">274</p> <p>1 the buoys were not there?</p> <p>2 A. Yes.</p> <p>3 Q. How much slower?</p> <p>4 A. That would be determined by the operator at</p> <p>5 the time based on the conditions and circumstances.</p> <p>6 Q. So it's fair to say that there is -- let's</p> <p>7 take this piece by piece.</p> <p>8 When I get on the highway the speed</p> <p>9 limit is 55 miles per hour, okay?</p> <p>10 A. Okay.</p> <p>11 Q. What is the safe speed limit for operating a</p> <p>12 vehicle in this portion of the Rio Grande River?</p> <p>13 MR. LYNK: Object to form.</p> <p>14 A. There is no specified speeds as to what</p> <p>15 constitutes a safe speed. As it says, it is -- a</p> <p>16 safe speed is -- requires that all vessels maintain a</p> <p>17 speed that allows them to respond properly and be</p> <p>18 stopped within a distance that allows them to avoid a</p> <p>19 collision at all times.</p> <p>20 And if you want to use a highway</p> <p>21 analogy. You've got road construction, and they've</p> <p>22 got barriers and they've got lane changes. What do</p> <p>23 they do? They reduce the speed.</p> <p>24 Q. Let me phrase this a little differently.</p> <p>25 Let's -- hypothetical. We're back in our RVSD boat,</p>	<p style="text-align: right;">276</p> <p>1 A. Yes.</p> <p>2 Q. What sort of storm conditions would it</p> <p>3 require to prevent an RVSD boat from -- impact the</p> <p>4 speed of an RVSD boat traveling down the Rio Grande</p> <p>5 River and passing the buoys on the side closest to</p> <p>6 Mexico? What sort of storm conditions would be</p> <p>7 present such that the buoys impacted the safe speed</p> <p>8 at which they could operate?</p> <p>9 A. What the buoys do is they reduce the width</p> <p>10 of the safe navigable area. If you've got winds that</p> <p>11 are coming crosswise across a channel, and they have</p> <p>12 a tendency to blow you -- to cause a vessel to drift</p> <p>13 one way or another, then going through at a high rate</p> <p>14 of speed could be problematic.</p> <p>15 Also, if the wind is such that it's</p> <p>16 creating rough water conditions on the river, that</p> <p>17 could affect the handling capabilities of the vessel.</p> <p>18 And if they have reduced room to navigate, that could</p> <p>19 make it so that a safe speed would be a reduced speed</p> <p>20 in that instance.</p> <p>21 Q. Can you turn to page 28 of your expert</p> <p>22 report? I want to ask some questions about the image</p> <p>23 that you have of the Rio Grande River, Exhibit --</p> <p>24 image number 14 --</p> <p>25 A. Yes.</p>
<p style="text-align: right;">275</p> <p>1 okay? And we are two miles upstream of the buoys,</p> <p>2 and you want to travel downstream to half a mile past</p> <p>3 the buoys. How much slower do you have to travel</p> <p>4 down the Rio Grande River past the buoys because of</p> <p>5 their placement in the water?</p> <p>6 A. That would depend upon stage of the river,</p> <p>7 the weather conditions, the strength of the current,</p> <p>8 how many other vessels are in that area.</p> <p>9 Q. Okay. Assume that there are no other</p> <p>10 vessels, it is the middle of the afternoon, and clear</p> <p>11 conditions.</p> <p>12 A. In that case, they could quite possibly</p> <p>13 maintain the same speed as they were prior to</p> <p>14 arriving in that section.</p> <p>15 Q. Okay. I did it again. So I understand you,</p> <p>16 when you say that the buoys impact the safe speed,</p> <p>17 what you mean is under certain conditions the buoys</p> <p>18 can impact safe -- the safe speed of vessels</p> <p>19 traveling up and down the Rio Grande River. Is that</p> <p>20 fair?</p> <p>21 MR. LYNK: Object to form.</p> <p>22 A. You could characterize it as that, yes.</p> <p>23 Q. (BY MR. STONE) So if there was storm</p> <p>24 conditions, the buoys might impact safe speeds</p> <p>25 traveling up and down the Rio Grande River?</p>	<p style="text-align: right;">277</p> <p>1 Q. -- on page 28. So you testified earlier</p> <p>2 today that the total width here from the U.S. to</p> <p>3 Mexico side is approximately 300 feet, right?</p> <p>4 A. Yes.</p> <p>5 Q. And we're looking at buoys. They're</p> <p>6 approximately 100, 110 feet from the U.S. shore. Is</p> <p>7 that accurate?</p> <p>8 MR. LYNK: Object to form.</p> <p>9 A. As an estimate in this particular</p> <p>10 photograph.</p> <p>11 Q. (BY MR. STONE) Okay. And I'm just going to</p> <p>12 ask about this particular photograph. So you've got</p> <p>13 approximately 200 feet of width on the other side of</p> <p>14 the buoys traveling down the Rio Grande River, right?</p> <p>15 A. Yes.</p> <p>16 Q. Okay. What happens if you're -- let's go</p> <p>17 back to our RVSD model, okay? You're in the RVSD;</p> <p>18 you're traveling down the Rio Grande River in the</p> <p>19 area where the buoys are located.</p> <p>20 What happens if you cross this</p> <p>21 international boundary in the middle of the water</p> <p>22 into Mexican waters as you're travelling down the Rio</p> <p>23 Grande River?</p> <p>24 A. I'm sorry, if you cross the boundary?</p> <p>25 Q. Yeah.</p>

<p style="text-align: right;">278</p> <p>1 A. Nothing.</p> <p>2 Q. Nothing, right?</p> <p>3 A. That I'm aware of.</p> <p>4 Q. So you actually have 200 feet of water on</p> <p>5 the other side of the buoys in order -- that you're</p> <p>6 operating within if you're traveling up or down the</p> <p>7 Rio Grande River in a vessel --</p> <p>8 A. Okay.</p> <p>9 Q. -- correct? Is that correct?</p> <p>10 A. Yeah. Approximately, yes.</p> <p>11 Q. So is it fair to say that in any of the</p> <p>12 vessels we've talked about, the johnboat, RVSD,</p> <p>13 canoe, a kayak, and an airboat, you could freely</p> <p>14 travel up and down the Rio Grande River where the</p> <p>15 buoys are located without your safe speed being</p> <p>16 impacted because you've got 200 feet of water to</p> <p>17 travel across?</p> <p>18 MR. LYNK: Object to form.</p> <p>19 A. Well, for those vessels that may or may not</p> <p>20 be accurate, but there are other vessels that</p> <p>21 potentially could be traveling on the water as well.</p> <p>22 Even for the installation of the barrier, if it's in</p> <p>23 deeper water, they're not going to be able to do that</p> <p>24 with the position of mooring anchors with excavators.</p> <p>25 They're going to have to use small tugs or push boats</p>	<p style="text-align: right;">280</p> <p>1 A. They could if the vessels were to be caught</p> <p>2 in restricted visibility such as a shutout rain or</p> <p>3 fog or smoke and they're traveling in the vicinity of</p> <p>4 those buoys and their -- the width of -- the safe</p> <p>5 width has been diminished.</p> <p>6 So I would certainly say that you have</p> <p>7 to travel at a slower speed to be a safe speed.</p> <p>8 Q. You understand the Rio Grande is currently</p> <p>9 under drought conditions, right?</p> <p>10 A. I know a lot of the south is under drought</p> <p>11 conditions, yes.</p> <p>12 Q. When was the last time there was shutout</p> <p>13 rain in the Rio Grande River area where the buoys are</p> <p>14 located?</p> <p>15 A. I have no idea.</p> <p>16 Q. So it's just a hypothetical, like if there</p> <p>17 was one day, a day where there was shutout rain,</p> <p>18 hypothetically it could impact a boat, the safe speed</p> <p>19 of a boat traveling up and down the Rio Grande River?</p> <p>20 A. Yes, I would say if there was shutout rain,</p> <p>21 that it would certainly do that, or smoke from fires.</p> <p>22 That could -- might be a more common occurrence</p> <p>23 there.</p> <p>24 Q. You also mentioned fog, right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">279</p> <p>1 or some sort of vessel and some sort of barge with a</p> <p>2 crane on it. And those vessels are far less</p> <p>3 maneuverable, and certainly their speed can be</p> <p>4 impacted.</p> <p>5 So I think that you can't just talk</p> <p>6 about the vessels that we've discussed, but what</p> <p>7 potential vessels could be traveling on that</p> <p>8 waterway.</p> <p>9 MR. STONE: Objection. Nonresponsive.</p> <p>10 Q. (BY MR. STONE) So I've only been asking --</p> <p>11 I asked about the vessels that we were aware of --</p> <p>12 that you were aware of that had conducted -- strike</p> <p>13 that.</p> <p>14 My question was about the vessels that</p> <p>15 we discussed today that you were aware of in this</p> <p>16 area. I'm not asking about hypothetical vessels that</p> <p>17 have never traversed this section of the Rio Grande</p> <p>18 River. I'm asking practically about actual vessels</p> <p>19 that travel in this area, and you've identified five</p> <p>20 different vessels: The RVSDs, the airboats, canoes,</p> <p>21 kayaks, and the johnboats, right?</p> <p>22 A. Okay, yes.</p> <p>23 Q. Would the buoys impact the safe speed of any</p> <p>24 of those vessels traveling up and down the Rio Grande</p> <p>25 River?</p>	<p style="text-align: right;">281</p> <p>1 Q. Let's do each. So how -- when you were</p> <p>2 there yesterday and in February, did you observe fog?</p> <p>3 A. No.</p> <p>4 Q. Are you aware of fog in this area of the Rio</p> <p>5 Grande River where the buoys are located?</p> <p>6 A. I'm not aware if there is or is not fog</p> <p>7 there.</p> <p>8 Q. And it wouldn't be regular fog. It would</p> <p>9 need to be really dense for it to impact the safe</p> <p>10 speed of a boat traveling up and down the Rio Grande</p> <p>11 River?</p> <p>12 A. It would have to --</p> <p>13 MR. LYNK: Object to form.</p> <p>14 A. It would have to be fog that reduces</p> <p>15 visibility.</p> <p>16 Q. (BY MR. STONE) And fog that reduces --</p> <p>17 would you agree with me generally that fog that</p> <p>18 accomplishes the reduction of visibility has to be</p> <p>19 dense?</p> <p>20 MR. LYNK: Object to form.</p> <p>21 A. I don't know what your definition of dense</p> <p>22 is, but it would have to be dense enough that the</p> <p>23 visibility is reduced.</p> <p>24 Another thing is we're talking -- you're</p> <p>25 talking about a single boat potentially traveling at</p>

<p style="text-align: right;">282</p> <p>1 one time. There could be a group of boats traveling, 2 and then if they were travelling in close proximity 3 to one another, to maintain a safe speed, they would 4 have to reduce their speed. 5 Q. (BY MR. STONE) What is the -- so you've 6 been there twice, right? 7 A. I have. 8 Q. And you've also looked at some images around 9 where the buoys are located, right? 10 A. Yes. 11 Q. What is the maximum number of boats that 12 you've seen in this section of the Rio Grande River? 13 I'm looking for a number. 14 A. The first time we were there, there were 15 three or four state boats and four airboats, three or 16 four airboats. So six to eight boats. 17 Q. And what about yesterday? 18 A. Three or four. 19 Q. Three or four yesterday. And of those six 20 boats you saw on the first trip that you took to the 21 site, how many of them were part of the tour that you 22 were being taken on? 23 MR. LYNK: Object to form. 24 A. Oh, I believe I said six to eight boats. 25 Half of them.</p>	<p style="text-align: right;">284</p> <p>1 before, but not yesterday. 2 Q. Are you aware of any instances in the one 3 year since the buoys have been installed where there 4 was smoke so dense around the buoys that it would 5 impair the safe speed of a vessel traveling up or 6 down the Rio Grande River? 7 A. I am not aware of that in particular; 8 however, I am aware that, as you mentioned, Texas is 9 in a drought condition, as is Florida and a lot of 10 other states, and wildfires are significant issues in 11 many different states. So just because there hasn't 12 been a fire in the last year doesn't mean that there 13 could not be one. 14 Q. So theoretically there could be like a -- 15 strike that. 16 Did you see like a forest in the area of 17 the buoys? 18 A. A forest? 19 Q. Uh-huh. 20 A. No. What I did see was a dense growth of 21 trees that looked dead to me and very dry and a lot 22 of brush that would -- we actually -- it was 23 commented by someone -- I don't recall whom -- that 24 if there was a fire, this place would -- it would 25 be -- this would be a good -- a bad place for a fire,</p>
<p style="text-align: right;">283</p> <p>1 Q. Approximately half. And then yesterday when 2 you went to the site and you said you spent -- you 3 were there for a couple of hours, right? 4 A. Yes. 5 Q. In the course of a couple hours, you said 6 that you saw -- I think you -- it's getting late in 7 day. I think you said five boats you saw? 8 A. I don't recall. I think that's right. 9 Q. And approximately of the five boats, how 10 many were boats that were part of the tour that you 11 were taking with CBP? 12 A. Two of them. 13 Q. So aside from the tour that you were on on 14 both occasions, it sounds like you saw three or four 15 boats in the vicinity of the buoys when you visited 16 the site? 17 A. I saw more than that, but some of them were 18 part of the tours. 19 Q. Understood. Finally, you mentioned smoke. 20 Did you see any smoke while you were doing the site 21 visit that would impair the safe speed of a vessel 22 traveling up and down the Rio Grande River? 23 A. We did see some smoke. It wasn't heavy 24 enough to impede visibility, but I have maneuvered 25 vessels in smoke dense enough to restrict visibility</p>	<p style="text-align: right;">285</p> <p>1 I should say. So there's certainly the potential for 2 wildfires. 3 Q. Thank you. Let's move on to page 31. This 4 is B, Rule 7, Risk of Collision. 5 A. Yes. 6 Q. So similar question. If you are -- and just 7 to clarify, this was another section, this page, 8 where you corrected some of the numbers in your 9 supplemental report, right? 10 A. Yes. 11 Q. So as it relates to risk of collision, what 12 is the risk of collision that the buoys represent to 13 any of the five types of vessels we've been 14 discussing traveling up and down the Rio Grande 15 River? 16 A. Well, if they were traveling across the Rio 17 Grande River -- 18 Q. I'm asking about up and down the Rio Grande 19 River. 20 A. Well, if they were to strike the barrier and 21 on at a high rate of speed, 20 to 25 miles an hour, 22 it could be very devastating. The floats are secured 23 with 3,000-ton -- 3,000-pound and 150-pound cement 24 blocks, concrete blocks. So if a smaller vessel 25 strikes it, the barrier is not going to move, and</p>

<p style="text-align: right;">286</p> <p>1 you're going to go from a stop -- you know, from 2 whatever speed you're traveling at to zero rather 3 quickly, and the person could very likely be ejected 4 from the boat. 5 If they don't hit the -- if they're 6 going up and down the river and they don't hit the 7 floats themselves, they could strike the concrete 8 blocks, and that could have serious consequences as 9 well. 10 Q. So how does -- I'm sorry, let me step back 11 for a minute and go back to Safe Speeds. 12 So assuming that you were traveling up 13 and down the Rio Grande River in any of the five 14 boats we've talked about and the conditions did not 15 involve rain, fog, or smoke, would you agree with me 16 that the buoys would not represent a impediment -- would 17 not reduce the safe speed at which you could operate 18 under normal conditions? 19 A. It depends on the volume of traffic. 20 Q. Okay. Assume that there are -- for the 21 purposes of this, a total of three to four boats in 22 the general vicinity of the buoys. 23 A. Okay. 24 Q. All right? Do -- would the buoys, the 25 presence of the buoys reduce the safe speed in which</p>	<p style="text-align: right;">288</p> <p>1 generally decreased depth the closer you get to the 2 bank of the river. So you don't know that you have 3 200 feet. 4 Q. Would a -- okay. Let's say we have 5 150 feet. How about that? If we take three of any 6 of the vess -- of the five vessels that we've just 7 been discussing and we lined them up next to each 8 other with sufficient distance between them to travel 9 safely and we went down the Rio Grande River on a 10 normal day under regular conditions -- there's no 11 rain. There's no fog. There's no smoke. There's no 12 chickens crossing the road. We're just traveling 13 down the Rio Grande River -- would the buoys impact 14 the safe speed at which those vessels could travel? 15 MR. LYNK: Object to form. 16 A. Probably not, but if it was ten vessels, 17 then probably so. 18 Q. (BY MR. STONE) Same question as it relates 19 to risk of collision. If we lined up three of any 20 variation of the five vehicles -- vessels that we've 21 talked about in this case, we put them at spaces next 22 to each other that's whatever safe distance is 23 necessary between them and we sailed them down the 24 Rio Grande River within that, you know, 150 feet that 25 we have between the buoys and the Mexican side of the</p>
<p style="text-align: right;">287</p> <p>1 you could travel up and down the Rio Grande River in 2 any of the five vessels we've talked about? 3 A. Well, there's a lot of different potential 4 scenarios. I think what you're suggesting is a group 5 of perhaps traveling in -- 6 THE REPORTER: I'm sorry, "a group of 7 vessels" -- 8 THE WITNESS: Vessels traveling in maybe 9 close proximity or not going the same direction about 10 the same speed. Traffic could be crossing the river 11 as well. And what you've done is you've reduced the 12 area in which vessels can maneuver to avoid 13 collisions or allisions with the barrier itself. So 14 I stand on my opinion that safe speed would be 15 reduced in the area of the barrier because of the 16 reduced navigational width. 17 Q. Okay. So if we took any of the five vessels 18 that we've described and we lined them up next to 19 each other, okay? We've got 200 feet of water on the 20 other side that we're going to be traveling in on the 21 other side of the buoys. We've operating within 200 22 feet of water, okay? 23 If you were to line up any -- 24 A. That's assuming, of course, that there's not 25 shoaling on the other side of the river, and there's</p>	<p style="text-align: right;">289</p> <p>1 water, would you agree with me that there's no risk 2 of collision under normal conditions on a regular 3 day? 4 A. No, I would not. 5 Q. Would you agree that buoys represent a risk 6 of collision to a boat no matter how many boats are 7 traveling up and down the Rio Grande River, no matter 8 how many boats are on the river? 9 A. I would say that it does. 10 Q. And that's just because of its mere presence 11 in the water it represents a risk of collision in 12 your opinion? 13 A. An example would be if two vessels were 14 traveling in opposite directions in the vicinity of 15 the barrier and one of them lost control of their 16 vessel and cut across the path -- a good example, 17 again, people understand cars and roads. You're 18 traveling down a two-lane highway and somebody is 19 coming towards you, and suddenly -- they're texting 20 on their phone or they've follow asleep or had a 21 heart attack or drunk, whatever the reason -- 22 unexpectedly they cut across your lane. 23 If there is a stone wall to the right of 24 you, you cannot turn to the right to avoid that 25 vessel -- that vehicle. Now I'm doing it in the</p>

<p style="text-align: right;">290</p> <p>1 reverse -- because there's no room to maneuver. So, 2 yes, it would certainly, in the scenario I just 3 provided, two vessels meeting each other in the 4 vicinity of that, it would reduce the -- particularly 5 if they're traveling at a higher speed and if they 6 haven't reduced their speed to a safe speed, a vessel 7 suddenly makes a turn, cuts across your bow, and 8 you've got a lot less room to maneuver, and it 9 increases the risk of collision.</p> <p>10 Q. Are they -- okay. So let me ask this 11 slightly differently. So the question here is about 12 the navigable capacity of the Rio Grande River that 13 we're discussing right now, right?</p> <p>14 A. Yes.</p> <p>15 Q. What is the most number of boats -- and I'm 16 looking for a number -- that you're aware of that 17 have operated in the vicinity of the buoys?</p> <p>18 A. My personal experience is, as I said before, 19 what was it, six to eight.</p> <p>20 Q. With six to eight boats in the vicinity of 21 the buoys, would it impact -- let's, for the purposes 22 of this hypothetical, assume there's six to eight 23 boats; same situation as, say, yesterday or back in 24 February, operating in the vicinity of the buoys, 25 would it -- as well as the buoys being present, would</p>	<p style="text-align: right;">292</p> <p>1 buoys represent a -- would those buoys diminish the 2 navigational capacity of the Rio Grande River for 3 you, traveling downstream in that RVSD?</p> <p>4 A. Well, what you're doing is you want me to 5 say something, and you're presenting a hypothetical 6 with ideal conditions and few vessels, and you're 7 wanting me to base it on my personal observation of 8 what took place during my site inspections.</p> <p>9 There's a lot of other days that -- I've 10 been there twice in how long? So how many other days 11 were there that I was not -- how many other days that 12 I was not there had many more vessels than that?</p> <p>13 You can't make a determination on 14 something based on, "Well, if everything goes right 15 and there's ideal conditions and the river level is 16 high." If you want me to say in ideal conditions is 17 it possible that those vessels could make it past, 18 then the answer is yes.</p> <p>19 But if you're trying to operate a vessel 20 safely, which means you're taking into account the 21 potential for something going wrong, then the answer 22 is no. I don't know how to make it any more clearer 23 than that.</p> <p>24 Q. It's fair to say that you didn't ask anybody 25 about how many -- well, during either of your site</p>
<p style="text-align: right;">291</p> <p>1 it impact the navigational capacity of the Rio Grande 2 River if you were in an RVSD two miles north of the 3 buoys and you wanted to travel down the Rio Grande 4 River to half a mile past where the buoys are 5 located?</p> <p>6 A. If you're proceeding down -- if there's a 7 group of boats and they're all proceeding down or 8 coming up and you have to slow down to get to -- you 9 have to slow down when you get to the barrier, yes, I 10 think that reduces the capacity.</p> <p>11 Q. So if there's not a group of boats all 12 traveling together, the boats are spread out just 13 like you saw in February when you visited and 14 yesterday when you visited -- I want you to -- I want 15 you to -- well, let's be very specific. Let's think 16 about yesterday. You were just there yesterday, 17 right?</p> <p>18 A. Yes.</p> <p>19 Q. Where the buoys were located. I want you to 20 visualize in your mind what it looks like when you 21 were on that boat by the buoys, okay?</p> <p>22 Now I want you to think if you were on 23 an RVSD a couple miles north of where you were 24 located, traveling down the Rio Grande River under 25 the conditions that existed yesterday, would those</p>	<p style="text-align: right;">293</p> <p>1 visits or in the six months that you've been an 2 expert on this case about how many vessels typically 3 operate in the vicinity of the buoys, right?</p> <p>4 MR. LYNK: Object to form.</p> <p>5 A. I did not.</p> <p>6 Q. (BY MR. STONE) So the only information we 7 have is the two site visits that you did about the 8 number of vessels that typically operate in this 9 area, right?</p> <p>10 MR. LYNK: Object to form.</p> <p>11 A. Well, that does not mean that's what the 12 average is or what the standard is, so I don't 13 understand the relevance of what you're asking.</p> <p>14 Q. (BY MR. STONE) You don't know how many 15 vessels typically operate on a given day in the 16 vicinity of the buoys, do you?</p> <p>17 A. You're exactly right.</p> <p>18 Q. And you don't know what the typical weather 19 conditions are like in the vicinity of the buoys, do 20 you?</p> <p>21 A. I would think there would be the same 22 weather conditions as in all of Eagle Pass.</p> <p>23 Q. And you know those weather conditions --</p> <p>24 A. I do not, no.</p> <p>25 Q. So the answer is yes, you don't know?</p>

<p style="text-align: right;">294</p> <p>1 A. The answer is I don't know.</p> <p>2 Q. And you didn't ask, right?</p> <p>3 A. No. What -- you've given me a lot of really</p> <p>4 good questions to ask after this deposition.</p> <p>5 MR. BRYANT: I think you should take</p> <p>6 that as a compliment.</p> <p>7 MR. STONE: Okay. I will. Let's do --</p> <p>8 let's go off the record.</p> <p>9 MR. LYNK: Okay.</p> <p>10 THE VIDEOGRAPHER: Off the record. Time</p> <p>11 is 6:05.</p> <p>12 (Brief pause.)</p> <p>13 THE VIDEOGRAPHER: All right. We're</p> <p>14 back on the record. Time is 6:06.</p> <p>15 MR. STONE: Pass the witness.</p> <p>16 MR. LYNK: All right. I do not have</p> <p>17 questions. All right.</p> <p>18 THE REPORTER: Before we go off the</p> <p>19 record, do you want a copy of the transcript?</p> <p>20 MR. LYNK: Yes.</p> <p>21 THE REPORTER: Do you want a copy of the</p> <p>22 video?</p> <p>23 MR. LYNK: Yes.</p> <p>24 THE REPORTER: Okay.</p> <p>25 MR. LYNK: I would like to expedite the</p>	<p style="text-align: right;">296</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: JOHN TIMMEL</p> <p>3 DATE OF DEPOSITION: JUNE 5, 2024</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>
<p style="text-align: right;">295</p> <p>1 transcript, but not the video. Just normal for the</p> <p>2 video.</p> <p>3 MR. STONE: We would like an expedited</p> <p>4 copy of both.</p> <p>5 THE REPORTER: Okay. How expedited?</p> <p>6 MR. STONE: Could we get the video</p> <p>7 tomorrow?</p> <p>8 THE REPORTER: I don't know. That would</p> <p>9 be up to Brian. If you did, that would probably be</p> <p>10 tomorrow afternoon.</p> <p>11 MR. STONE: That's fine.</p> <p>12 THE VIDEOGRAPHER: Do you want your</p> <p>13 video sync'd with the transcript?</p> <p>14 THE REPORTER: You won't get it</p> <p>15 tomorrow.</p> <p>16 MR. STONE: We don't need it sync'd</p> <p>17 tomorrow.</p> <p>18 MR. LYNK: We'll have the witness read</p> <p>19 and sign.</p> <p>20 THE VIDEOGRAPHER: Off the record. Time</p> <p>21 is 6:07.</p> <p>22 (Deposition concluded at 6:07 p.m.)</p> <p>23</p> <p>24 -- SIGNATURE REQUESTED --</p> <p>25</p>	<p style="text-align: right;">297</p> <p>1 I, JOHN TIMMEL, have read the foregoing</p> <p>2 deposition and hereby affix my signature that same is</p> <p>3 true and correct, except as noted above.</p> <p>4</p> <p>5 _____</p> <p style="text-align: center;">JOHN TIMMEL</p> <p>6</p> <p>7 THE STATE OF _____)</p> <p>8 COUNTY OF _____)</p> <p>9 Before me, _____, on this day</p> <p>10 personally appeared JOHN TIMMEL, known to me (or</p> <p>11 proved to me under oath or through _____)</p> <p>12 (description of identity card or other document) to</p> <p>13 be the person whose name is subscribed to the</p> <p>14 foregoing instrument and acknowledged to me that he</p> <p>15 executed the same for the purposes and consideration</p> <p>16 therein expressed.</p> <p>17</p> <p>18 Given under my hand and seal of office, this</p> <p>19 _____ day of _____, _____.</p> <p>20</p> <p>21 _____</p> <p style="text-align: center;">NOTARY PUBLIC IN AND FOR</p> <p>22</p> <p>23 THE STATE OF _____</p> <p>24 My commission expires: _____</p> <p>25 ____ No Changes Made ____ Amendment Sheet(s) Attached</p>

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1 IN THE UNITED STATES DISTRICT COURT
 2 FOR THE WESTERN DISTRICT OF TEXAS
 3 AUSTIN DIVISION
 4 UNITED STATES OF AMERICA,)
)
 5 Plaintiff,)
)
 6 VS.) CIVIL ACTION
)
 7 GREG ABBOTT IN HIS) NO.: 1:23-cv-00853-DAE
 8 CAPACITY AS GOVERNOR OF)
 9 THE STATE OF TEXAS, AND)
 10 THE STATE OF TEXAS,)
 11)
 12 Defendants.)

13 REPORTER'S CERTIFICATION OF THE ORAL
 14 DEPOSITION OF JOHN TIMMEL
 15 JUNE 5, 2024

16 I, Vanessa J. Theisen, a Certified
 17 Shorthand Reporter in and for the State of Texas,
 18 hereby certify to the following:
 19 That the witness, JOHN TIMMEL, was duly
 20 sworn by the officer and that the transcript of the
 21 oral deposition is a true record of the testimony
 22 given by the witness;
 23 That the original deposition was delivered
 24 to Mr. Brian Lynk.
 25 That a copy of this certificate was served
 on all parties and/or the witness shown herein on
 June 11th, 2024.
 I further certify that pursuant to FRCP
 Rule 30(3) that the signature of the deponent:

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1 _XX_ was requested by the deponent or a
 2 party before the completion of the deposition and
 3 that the signature is to be before any notary public
 4 and returned within 30 days from date of receipt of
 5 the transcript.
 6 If returned, the attached Changes and
 7 Signature Page contains any changes and the reasons
 8 therefore:
 9 ____ was not requested by the deponent or
 10 a party before the completion of the deposition.
 11 I further certify that I am neither
 12 counsel for, related to, nor employed by any of the
 13 parties or attorneys in the action in which this
 14 proceeding was taken, and further that I am not
 15 financially or otherwise interested in the outcome of
 16 the action.
 17 Certified to by me on this, the 10th day
 18 of June, 2024.

19
 20
 21 VANESSA J. THEISEN, Texas CSR, RPR
 22 Texas Cert No. 3238
 23 Expiration Date: 10/31/25
 24 Integrity Legal Support Solutions
 25 Firm Registration No. 528
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